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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JOHN W. HECHINGER, *et al.*,
Petitioners,

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
Respondents,

UNITED STATES OF AMERICA,
Intervenor.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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223 pp

TABLE OF CONTENTS

Page

Opinion and Judgment of the United States Court of Appeals for the District of Columbia Circuit in *Hechinger v. Metropolitan Washington Airports Authority*, No. 94-7036 (D.C. Cir. Sept. 27, 1994) 1a

Order Granting Stay of Effective Date of Opinion and Order of District Court and Stay of Mandate and Effective Date of Opinion and Order of Court of Appeals, No. 94-7036 (D.C. Cir. Oct. 24, 1994) 20a

Memorandum Opinion and Order of the United States District Court for the District of Columbia in *Hechinger v. Metropolitan Washington Airports Authority*, 845 F. Supp. 902 (D.D.C. 1994) 22a

Modification of January 31, 1994 Memorandum Opinion and Order of the United States District Court for the District of Columbia, 845 F. Supp. 902, 909 (D.D.C. 1994) 35a

Order Granting Stay of District Court Judgment Pending Appeal in *Hechinger v. Metropolitan Washington Airports Authority*, No. 94-7036 (D.C. Cir. April 11, 1994) 39a

Constitutional Provisions, Statutes, Ordinances, and Regulations Involved, in relevant part:

U.S. CONST. art. I, §§ 1, 6 cl. 2, 7 cl. 2, 7 cl. 3; art. II, §§ 1, 2 cl. 2; art. IV, § 3 cl. 2 ..... 40a

Metropolitan Washington Airports Act of 1986, Pub. L. No. 99-500, 100 Stat. 1783-373 (Unamended Act) 42a

Metropolitan Washington Airports Act Amendments of 1991, Pub. L. No. 102-240, 105 Stat. 2197-203 (1991 Amendments) 69a

TABLE OF CONTENTS—Continued

Page

Metropolitan Washington Airports Act of 1986, as amended by the Metropolitan Washington Airports Act Amendments of 1991, formerly codified at 49 U.S.C. app. § 2451-2461 * 80a

1985 Va. Acts ch. 598 ..... 113a

1987 Va. Acts ch. 665 ..... 132a

D.C. Act 6-90 (1985) 144a

D.C. Act 7-32 (1987) 165a

Lease of the Metropolitan Washington Airports (Mar. 2, 1987) 173a

Amendment No. 1 to the Lease of the Metropolitan Washington Airports (Dec. 31, 1991) 197a

Bylaws of the Metropolitan Washington Airports Authority (Mar. 4, 1987), as amended (Jan. 8, 1992 and April 1, 1992) 200a

Plaintiffs' Statement of Material Facts (from Plaintiffs' Motion for Summary Judgment) 217a

Affidavit of Pamela Gilbert (from Plaintiffs' Motion for Summary Judgment) 219a

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* Pursuant to Pub. L. No. 103-272 (July 5, 1994), most laws relating to transportation formerly codified in 49 U.S.C. app. have been recodified elsewhere. The Metropolitan Washington Airports Act of 1986 as amended was not recodified and remains in force as it appears in the former codification. *See* H.R. Rep. No. 180, 103rd Cong., 1st Sess. 644 (1993), *reprinted in* 1994 U.S.C.C.A.N. 818, 1461. The codified version of the amended statute is reprinted herein for the convenience of the Court.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 19, 1994 Decided September 27, 1994

No. 94-7036

JOHN W. HECHINGER, JR.; CRAIG H. BABB; CITIZENS FOR THE ABATEMENT OF AIRCRAFT NOISE, INC.,
Appellees

UNITED STATES OF AMERICA,
Intervenor for Appellee

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY; BOARD OF REVIEW,
Appellants

Appeal from the United States District Court
for the District of Columbia

D.D.C. No. 92cv00556)

Before BUCKLEY, WILLIAMS, and ROGERS, *Circuit Judges.*

Opinion for the court filed by *Circuit Judge* BUCKLEY.

BUCKLEY, *Circuit Judge*: The Metropolitan Washington Airports Authority operates the Washington National and Dulles International Airports under lease from the Federal Government and is required by statute to submit certain actions to a Board of Review before they

may take effect. As originally enacted, the statute stipulated that the Board be composed entirely of Members of Congress and gave it the power to veto the Authority's actions. In 1991, the Supreme Court held that the Board was an agent of Congress and that it exercised federal power in violation of the doctrine of the separation of powers. The Court's decision was based in significant degree on the Board's mandatory congressional membership and its veto power. Although Congress has since amended the statute to eliminate these provisions, we conclude that the amendments impose other qualifications for Board membership and have vested the Board with other powers that, together, continue to offend the Constitution.

I. Background

In 1987, the Secretary of Transportation entered into a long-term lease of the Washington National and Dulles International Airports to the Metropolitan Washington Airports Authority ("Authority"), an independent regional authority that had been created two years earlier by compact between the Commonwealth of Virginia and the District of Columbia. Prior to that time, the two airports had been operated by the Federal Government.

The lease was authorized by the Metropolitan Washington Airports Act of 1986 ("Transfer Act") (codified as amended at 49 U.S.C. app. §§ 2451-2461 (1988 & Supp. III 1991)). Congress conditioned the lease on the Authority's establishment of a Board of Review ("Board") consisting of nine Members of Congress. *Id.* § 2456(f)(1) (1988) (superseded); *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, Inc.*, 111 S. Ct. 2298, 2303 (1991) ("*CAAN*"). Under the congressional scheme, the Authority was required to submit the following actions for the Board's consideration at least 30 calender days before they were to become effective (60 days in the case of the annual budget):

(i) the adoption of an annual budget;

(ii) the authorization for the issuance of bonds;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan, including any proposal for land acquisition; and

(v) the appointment of the chief executive officer.

49 U.S.C. app. § 2456(f)(4)(B) (1988) (superseded). If the Board did not disapprove an action within 30 days, it could take effect. 49 U.S.C. app. § 2456(f)(4)(C) (1988) (superseded).

On June 17, 1991, the Supreme Court ruled that the Board was vested with power that violated the constitutional doctrine of the separation of powers. *CAAN*, 111 S. Ct. at 2312 (1991) (affirming judgment in *Citizens for the Abatement of Aircraft Noise, Inc. v. Metropolitan Washington Airports Auth.*, 917 F.2d 48 (D.C. Cir. 1990)). Within six months, Congress enacted amendments to the Transfer Act ("1991 Amendments" or "Amendments") that effected major changes in the composition and powers of the Board.

We begin with the first. As originally enacted, the Transfer Act required that the nine members of the Board be Members of Congress, of whom eight had to be members of specified congressional committees having jurisdiction over transportation issues. The Board members were to be chosen from lists furnished by the Speaker of the House and the President *pro tempore* of the Senate. 49 U.S.C. app. § 2456(f)(1) (1988) (superseded). The Supreme Court noted the following problems with this arrangement:

> The list system, combined with congressional authority over committee assignments, guarantees Congress effective control over appointments. Control over committee assignments also gives Congress effective

> removal power over Board members because depriving a Board member of membership in the relevant committees deprives the member of authority to sit on the Board.

CAAN, 111 S. Ct. at 2308. After this admonishment, Congress revised the composition of the Board to require that

> [m]embers of the Board of Review shall be individuals who have experience in aviation matters and in addressing the needs of airport users and who themselves are frequent users of the Metropolitan Washington Airports. A member of the Board of Review shall be a registered voter of a State other than Maryland, Virginia, or the District of Columbia.

49 U.S.C. app. § 2456(f)(2)(C). While the Authority's Board of Directors ("Directors") continues to appoint the members of the Board of Review and now has the power to remove members for cause, *id.* § 2456(f)(11), the Directors are still confined to the lists of nominees submitted by the Speaker and the President *pro tempore*. *Id.* § 2456(f)(1).

The 1991 Amendments also redefined the powers of the Board. While they eliminated the Board's veto authority, they expanded its other powers in a number of significant ways. The Amendments extended the list of actions requiring Board review to include "the award of a contract . . . which has been approved by the board of directors of the Airports Authority" as well as "any action of the board of directors approving a terminal design or airport layout or modification of such design or layout[,]" 49 U.S.C. app. § 2456(f)(4)(B) (Supp. III 1991), and authorized members of the Board to participate in, but not vote at, meetings of the Directors. *Id.* § 2456(f)(7). The Amendments also made substantial changes in the review process, including a grant to the Board of the authority to make recommendations regarding actions submitted for its re-

view, *id.* § 2456(f)(4)(C), such actions to be referred to Congress for its further review if the Directors fail to adopt the Board's recommendations. *Id.* § 2456(f)(4)(D)(ii).

Specifically, the amended Transfer Act provides that the Board may, within 30 calendar days or 10 "legislative days" of its submission, whichever is longer, present to the Directors a recommendation concerning a proposed action. *Id.* § 2456(f)(4)(C). Legislative days are calculated by

> excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days. . . .

Id. If no recommendation is made during that period, or if the Board decides it will make no recommendation before the period elapses, the Directors' proposal may take effect. *Id.*

Similarly, if the Board makes a recommendation and the Directors adopt it, the revised proposal may go into effect immediately. *Id.* § 2456(f)(4)(D)(i). If the Directors do not adopt the Board's recommendation, the Directors must submit a detailed description of the proposed action, the Board's recommendation, and the Directors' evaluation and response to the recommendation to the Speaker of the House and the President of the Senate for a review period of 60 legislative days. *Id.* § 2456(f)(4)(D)(ii). If Congress does not pass a joint resolution of disapproval within this period, the Directors' proposed action may take effect. *Id.* § 2456(f)(4)(D)(i), (5)(B).

Among the features of the original Act that have been retained are the Board's authority to "request the . . . Authority to consider and vote, or to report, on any matter related to" the Dulles or National Airports, to which the Authority must comply "as promptly as feasible," *id.*

§ 2456(f)(6), and what may be described as the 1986 Act's "drop-dead" clause. It provides that if the Board of Review

> is unable to carry out its functions under this subchapter by reason of a judicial order, the Airports Authority thereafter shall have no authority to perform any of the actions that are required . . . to be submitted to the Board of Review.

Id. § 2456(h).

On cross-motions for summary judgment, U. S. District Judge Joyce Hens Green concluded that the Board of Review was an agent of Congress that exercised federal power, *Hechinger v. Metropolitan Washington Airports Auth.*, 845 F. Supp. 902, 907 (D.D.C. 1994), and held that the amended Act was unconstitutional in that it permitted the Board to exercise impermissible control over the Authority. *Id.* at 908. Judge Green also held that the members of the Board were selected in a manner that violated the Constitution's Appointments Clause. *Id.* at 908-09. As we agree that the Board is a congressional agent that exercises significant federal power in violation of separation-of-powers principles, we do not address the latter ruling.

II. Analysis

A. Is the Board of Review an Agent of Congress?

Following the approach adopted by the Supreme Court in *CAAN*, 111 S. Ct. at 2306-09, we first determine whether the Board is an agent of Congress. No single factor is dispositive. Among the factors considered by the *CAAN* Court were the conditioning of the lease of the two airports on the Authority's creation of the Board of Review, the presence of the drop-dead clause, the Federal Government's

> strong and continuing interest in the efficient operation of the airports . . . [which] motivated the crea-

> tion of the Board of Review, . . . [and][m]ost significant, [that] membership on the Board of Review [was] limited to federal officials, specifically members of congressional committees charged with authority over air transportation.

CAAN, 111 S. Ct. at 2307. The Court concluded:

> We thus confront an entity created at the initiative of Congress, the powers of which Congress has delineated, the purpose of which is to protect an acknowledged federal interest, and membership in which is restricted to congressional officials. Such an entity necessarily exercises sufficient federal power as an agent of Congress to mandate separation-of-powers scrutiny.

Id. at 2308.

As amended, the Transfer Act presents us with the same entity, although devoid of the explicit membership restrictions. The new Board and its powers continue to be the creation of Congress, the drop-dead provision remains in place, and the federal interest in the efficient operation of the two airports continues unchanged. The question, then, is whether erasing the condition that the Board's membership be limited to Members of Congress, eight of whom sit on specified congressional committees, while requiring the Authority to select members from lists prepared by the Speaker of the House and the President *pro tempore* of the Senate, suffices to eliminate the Board's status as an agent of Congress and thus immunizes the amended Act from separation-of-powers review.

It is true that the Court found the original membership condition "[m]ost significant." *Id.* at 2307. Yet this condition was but one of "[s]everal factors combin-[ing]" to warrant separation-of-powers analysis, *id.* at 2306-07. Its elimination, then, does not end our inquiry. Indeed, the Court specifically called for a functional ap-

proach, reminding us that " 'separation-of-powers analysis does not turn on the labeling of an activity.' " *Id.* at 2307 (quoting *Mistretta v. United States*, 488 U.S. 361, 393 (1989)).

To this end, we look to the revised provisions establishing the Board. Its members must be: (1) frequent users of the Metropolitan Washington Airports; (2) registered voters of a State other than Maryland, Virginia, or the District of Columbia; and (3) experienced in aviation matters and in addressing the needs of airport users. 49 U.S.C. app. § 2456(f)(2)(C). Hechinger maintains that these qualifications are met by Members of Congress who serve on the relevant oversight committees, thus assuring their domination of the Board. Similarly, the United States, an intervenor, argues that the district court correctly concluded that the new requirements for Board membership "ensured that many members of Congress—and few others—will be eligible to serve on the Board of Review." *Hechinger*, 845 F. Supp. at 907. The Authority responds that these requirements do not compel the selection of a Member of Congress but merely ensure that the Board will provide nationwide users with informed representation.

While it is true that Board membership is no longer limited to Representatives and Senators who sit on committees that have jurisdiction over air transportation, as a practical matter, relatively few individuals other than members or alumni of those committees will be able to meet the new criteria. Thus it is hardly happenstance that of the nine members appointed to the Board following adoption of the 1991 Amendments, eight were Members of Congress who served on committees having jurisdiction over air transportation—the lone outsider being a former Secretary of Transportation. *Cf. C & A Carbone, Inc. v. Town of Clarkstown*, 114 S. Ct. 1677, 1684 (1994) (Court looks beyond "explicit terms" of facially neutral local ordinance to its "pracical effect and design.").

We are also struck by Congress's choice of the period within which the Board must make its recommendations: the longer of 30 calendar days or 10 legislative days. Again, it is not happenstance that computation of the latter requires the exclusion of those days on which Representatives and Senators may be expected to be out of town; namely, the weekends, holidays, and congressional adjournments and recesses when they are free to work in their respective constituencies. *Id.* § 2546(f)(4)(C). There can be no reason for such a provision other than to serve the convenience of the Members of Congress who were expected to serve on the Board.

Finally, we examine the manner in which the members of the Board are selected. While they are no longer required to be Members of Congress, and while they may now be removed for cause by the Directors, *id.* § 2456(f)(11), they must still be nominated by the Speaker of the House or the President *pro tempore* of the Senate. *Id.* § 2456(f)(1). It is true that the Directors may request that additional names be submitted, *id.* § 2456(f)(1), but we have little doubt who would win a test of wills because the 1991 Amendments also provide that at any time that the Board

> has more than 4 vacancies and lists have been provided for appointments to fill such vacancies, the Airports Authority shall have no authority to perform any of the actions that [must] be submitted to the Board of Review.

Id. § 2456(f)(2)(D).

In *CAAN*, the Supreme Court found it significant that "appointments *must* be made from the lists, and there is no requirement that the lists contain more recommendations than the number of Board openings." 111 S. Ct. at 2308 (emphasis in original). This remains true of the amended Act. Because the Directors may never go outside the lists furnished by the Speaker and the President

pro tempore, we conclude that Congress retains control over appointments. This control, together with the provisions that in practice ensure that the Board will be dominated by Members of Congress, persuades us that Congress intended the Board to serve, and we hold that it does serve, as its agent.

B. Does the Board of Review Exercise Federal Power?

In order to determine the nature of the power exercised by the new Board, it is necessary to understand the practical consequences of its ability to delay actions that are contemplated by the Authority. Under the Transfer Act, the Board has the longer of 30 days or 10 legislative days within which to review certain actions proposed by the Directors. 49 U.S.C. app. § 2456(f)(4)(C); *see also id.* § 2456(f)(4)(B) (listing actions). The Board may let the proposal go into effect by allowing the waiting period to lapse, may "decide[ ] it will not make a recommendation on an action" (thereby allowing it to go into effect immediately), or may make recommendations regarding the action, including one that it not take effect. *Id.* § 2456(f)(4)(C). If recommendations are made and the Directors adopt them, the proposal may go into effect immediately, *id.* § 2456(f)(4)(D)(i); if the recommendations are not adopted, they must be transmitted, along with "a detailed description of the action . . . and the evaluation and response of the board of directors to [the Board of Review's] recommendation[s]," to Congress for a 60-legislative-day review period. *Id.* § 2456(f)(4)(D)(ii).

The Authority argues that because the Board has lost its right to veto and may only make recommendations, it has been stripped of power and serves solely in an advisory capacity. Yet the Board's loss of its veto power does not necessarily mean that it has lost the effective control over the Authority that the Supreme Court found to be an unconstitutional exercise of federal power. *See*

CAAN, 111 S. Ct. at 2308, 2312. We must therefore examine the potential impact of the Board's remaining authority on the Directors' decisionmaking. To this end, we examine the various ways in which the Board is able to affect the substance of the Authority's actions.

First, the Board may request the Authority "to consider and vote, or to report, on any matter related" to the two airports; and the Authority must do so "as promptly as feasible." *Id.* § 2456(f)(6). The Board thus has the ability to force any issue it wishes onto the Authority's agenda for priority consideration.

Second, members of the Board may participate as non-voting members in meetings of the Directors. *Id.* § 2456(f)(7). To paraphrase our comment in *Federal Election Comm'n v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. granted*, 114 S. Ct. 2703 (June 20, 1994), in which we invalidated an arrangement whereby Congress appointed two of its agents as non-voting *ex officio* members of the Federal Election Commission, "we cannot conceive why Congress would wish [members of the Board of Review to participate in meetings of the Directors] if not to exercise *some* influence." *See id.* at 826 (emphasis in original). Even if the members "were to remain completely silent during all deliberations (a rather unlikely scenario), their mere presence as agents of Congress [would] convey [ ] a tacit message to the [Directors]." *Id.* at 826. We held, in that case, that "the mere presence of agents of Congress on an entity with executive powers offends the Constitution." *Id.* at 827. Although members of the Board may not vote at meetings of the Directors, they may attend them; they may place items on the agenda for the Directors' priority consideration; and they are free to express their views on proposed actions before the Directors have made the formal decisions that must then be submitted to the Board for its consideration. This arrangement raises the same concerns that underpinned our decision

in *NRA Political Victory Fund:* Advice . . . surely implies influence, and Congress must limit the exercise of its influence, whether in the form of advice or not, to its legislative role." *Id.*

Finally, and most significantly, the Board has the discretion to accelerate the implementation of a Directors' decision by promptly approving it or consigning it to the delays and uncertainties of a congressional review. The Authority argues that the Transfer Act's review requirements are nothing more than variations on legitimate "report-and-wait" provisions to be found in other statutes. These typically require that a federal agency's proposed actions be referred to Congress for a period that is long enough to permit them to be studied and, if found wanting, to allow for the passage of a joint resolution of disapproval. *See, e.g., Sibbach v. Wilson & Co., Inc.,* 312 U.S. 1, 15 (1941) (report-and-wait provision allowing Congress to review the Federal Rules of Civil Procedure and "veto their going into effect if contrary to the policy of the legislature"); *Alaska Airlines, Inc. v. Brock,* 480 U.S. 678, 689-90 (1987) (provision requiring Secretary of Labor to refer certain proposed regulations to transportation committees of both Houses of Congress).

Hechinger concedes that Congress could have constitutionally required that all the Directors' proposed actions be submitted to Congress for a period of review before taking effect. But Congress has vested the Board with a substantive role that distinguishes this case from the "report-and-wait" cases on which the Authority relies. The provisions in those cases require automatic referral of particular decisions to Congress; thus their effect on the referring party's decisionmaking is neutral. Here, by contrast, the Board has the ability to decide whether action taken by the Directors will be allowed to take immediate effect or be subjected to a 60-statutory-day congressional review. It is this discretion that provides the Board its leverage.

The Authority nevertheless sees an analogy between the Board's power to delay the effective date of Authority actions and that of the Comptroller General to stay the award of contracts under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988) ("CICA"), which two circuit courts have upheld. *See Ameron, Inc. v. United States Army Corps of Eng'rs*, 809 F.2d 979 (3d Cir. 1986); *Lear Siegler, Inc., Energy Prods. Div. v. Lehman*, 842 F.2d 1102 (1988), *irrelevant portion withdrawn en banc*, 893 F.2d 205 (9th Cir. 1989). CICA authorizes the Comptroller General to investigate complaints that a federal agency has solicited bids or awarded a contract in violation of the law. If the Comptroller General notifies an agency that a rejected bidder has filed a protest, the award of the contract is automatically stayed pending an investigation of the disputed bidder's charges. 31 U.S.C. § 3553(c)(1). The Comptroller General may take up to 90 working days to conduct the investigation but may dismiss the protest before they have expired (thereby lifting the stay) if he finds it to be frivolous or facially invalid. *Id.* § 3554(a)(1), (3). On the other hand, the stay may be overridden by

> [t]he head of the procuring activity responsible for award of a contract . . . upon a written finding . . . that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General. . . .

Id. § 3553(d)(2)(A)(ii). If the Comptroller General finds a breach of the laws governing the solicitation or award of government contracts, he must make appropriate recommendations to the agency, *id.* § 3554(b)(1); and if these are not implemented, he must record the pertinent information in a report he is required to submit to Congress on an annual basis. *Id.* § 3554(e)(2).

In *Ameron*, the Third Circuit concluded that the Comptroller General's ability to shorten the 90-day stay

provision might well cause procurement officials to "exercise their discretion in ways which are not required by the procurement laws, and which they would not otherwise have chosen, in order to minimize conflict with the Comptroller General." It found, however, that "any potential disruption of the executive function [was] minimal." *Ameron*, 809 F.2d at 997. The Ninth Circuit's analysis was similar:

> [T]he proper inquiry is not whether a legislative agent can temporarily "bind" or "directly affect" parties outside the legislative branch, but rather whether the legislative agent exercises *control* or ultimate authority in the disposition of a particular issue. It is clear that the stay provisions do not establish such control. As noted above, the stay is temporary, usually 90 working days or less. Because the recommendations of the Comptroller General are non-binding, the stay cannot be used to coerce the procuring agency to make a particular final disposition; rather the stay provisions force nothing more than a dialogue between the procuring agency and the legislature.

Lear, 842 F.2d at 1110 (emphasis in original). The Ninth Circuit stressed that the imposition of a stay was initiated by a bid protester, not the Comptroller General, and that the Comptroller General may only consider the length of time necessary to decide the bid protest in varying the length of the stay and "is not authorized to consider the importance or wisdom of the purchase decision." *Id.* at 1111; *see also Ameron*, 809 F.2d at 997.

The authority wielded by the Board under the Transfer Act is significantly greater than that of the Comptroller General under CICA. Unlike CICA, the amended Act does not condition the Board's review authority on third-party complaints; rather, it authorizes the Board to review particular issues considered by the Authority. Second, and more important, the Act does not allow the Au-

thority to override the Board, a safeguard that both *Lear* and *Ameron* viewed as vital in concluding that the stay provisions did not vest the Comptroller General with power over persons outside the legislative branch. *Lear*, 842 F.2d at 1111 ("Were the Comptroller General thus able to stay a procurement contract indefinitely, a serious issue of his control over procurement would be raised . . . [However, the override] provision lodges ultimate authority over the timing of the contracts with the executive branch and obviates the problem of an indefinite stay."); *Ameron*, 809 F.2d at 997 ("If the Comptroller General really does require so much time to decide the protest that the stay interferes with important executive interests, CICA authorizes the executive to override the stay.") (footnote omitted).

By contrast, the Directors' inability to override the Board and forestall congressional review is a serious hindrance to the Authority, because many of the decisions subject to review, such as the adoption of budgets, the letting of contracts, and the issuance of bonds, are time-sensitive. Major airports are complex operations, especially when, as here, significant capital improvement programs are in progress. Any delay in the adoption of an annual budget and any suspension of the authority to let contracts or issue bonds can result in millions of dollars of additional costs and can adversely affect the public safety. See Affidavit of James A. Wilding, General Manager of the Authority (Feb. 14, 1994) at 4, 7-9 (supporting Authority's motion for stay of district court's order). The pressure to avoid such costly interruptions by accommodating the Board is self-evident.

The Authority acknowledges that the Board is in a position to influence the Directors, but it maintains that the ways in which the Board may affect their decisions are indistinguishable from those by which Congress is able "to advise, coordinate, and even directly influence an executive agency . . . through oversight hearings, appro-

priation and authorization legislation, or direct communication with the [agency]." *NRA Political Victory Fund,* 6 F.3d at 827. There can be no question that Congress is able to exercise enormous influence over agency decisions in these and other constitutionally permissible ways. But there is a qualitative difference between these channels for congressional influence and the structural relationship between Board and Authority that the Transfer Act has established—the difference between persuasion and coercion.

In *CAAN,* the Court quoted James Madison on the potential that always exists, in democratic societies, for the abuse of legislative power:

> It will not be denied, that power is of an encroaching nature, and that it ought to be effectively restrained from passing the limits assigned to it.
>
> * * *
>
> [The legislative department's] constitutional powers being at once more extensive and less suspectible of precise limits, it can with the greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real-nicety in legislative bodies, whether the operation of a particular measure, will, or will not extend beyond the legislative sphere.

111 S. Ct. at 2310-11 (quoting The Federalist No. 48, pp. 332-34 (J. Cooke ed. 1961) (J. Madison)).

We acknowledge that we are dealing with "a question of real-nicety," but we are satisfied that Congress has here encroached "beyond the legislative sphere" because the Board of Review has been vested with a range of powers whose cumulative effect is to enable it to interfere impermissibly with the Directors' performance of their independent responsibilities. In the place of the veto provision, the amended Transfer Act empowers the Board to

choose, in its sole discretion, which of the Authority's decisions may be implemented immediately and which will be subjected to the risks and delays of congressional review. In the place of mandatory congressional membership on the Board, it sets forth requirements that both in principle and in practice continue to ensure congressional domination of the Board. In redefining the powers of the Board, it actually expands the scope of its review. Moreover, the amended statute retains provisions permitting the Board to compel the Authority to consider particular issues and conditioning the Authority's ability to take vital actions on the Board's own continuing ability to exercise its powers under the Act.

What tips the balance, in our judgment, is the Board's power to delay and perhaps overturn critical decisions by requiring their referral to Congress. The delays it can impose are hardly trivial. The 60-legislative-day congressional review period will extend for at least three months and, depending on the congressional cycle, can last as long as six. Affidavit of Pamela Gilbert, Legislative Director of Public Citizen's Congress Watch (May 28, 1992) at 2. *Cf. Bliley v. Kelly*, 23 F.3d 507, 509 (D.C. Cir. 1994) (30-legislative-day congressional review period extended from January 11, 1991 to March 6, 1991—a period of 54 calendar days.) Thus, as Judge Green aptly put it,

> [u]pon receipt of a "recommendation" from the Board of Review, the Airports Authority has two choices. It can adopt the recommendation . . . [or] transmit a detailed description of the proposed action to Congress. . . . In short, the Airports Authority must either bow to the will of the Board of Review, or risk the time and uncertainty of congressional action. This power is far more than merely "advisory" as defendants claim; it gives the Board of Review the power to coerce the Airports Authority to comply with any "recommendation."

Hechinger, 845 F. Supp. at 908. The mere existence of this power to delay provides the Directors with an enormous incentive to avoid confrontations by tailoring their decisons to suit the Board's pleasure; it also gives the Board the power to hold an important decision hostage in order to secure the Directors' agreement to an unrelated matter.

We do not suggest that the Board has or would abuse its authority in such a manner. But the potential for abuse is there. As the Supreme Court observed in *CANN*,

> the statutory scheme challenged today provides a blueprint for extensive expansion of the legislative power beyond its constitutionally-confined role. Given the scope of the federal power to dispense benefits to the States in a variety of forms and subject to a host of statutory conditions, Congress could, if this Board of Review were valid, use similar expedients to enable its Members or its agents to retain control, outside the ordinary legislative process, of the activities of state grant recipients charged with executing virtually every aspect of national policy. As James Madison precisely observed, the legislature "can with greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments."

111 S. Ct. at 2312 (quoting The Federalist No. 48 at 334 (J. Cooke ed. 1961)). To our mind, Congress's revisions of the Transfer Act have not satisfied the concerns expressed in *CAAN*. Although the Board's veto power has been eliminated, the nature of the relationship between the Board and the Directors is such that the latter must necessarily trim their sails to accommodate the former's wishes. This, in our judgment, is a sufficient exercise of federal power to violate the doctrine of the separation of powers. Having so determined, it is not necessary for us to classify the nature of that power:

> If the [Board of Review's] power is executive, the Constitution does not permit an agent of Congress to exercise it. If the power is legislative, Congress must exercise it in conformity with the bicameralism and presentment requirements of Art. I, § 7.

CAAN, 111 S. Ct. at 2312.

III. Conclusion

For the foregoing reasons, we agree with the district court's conclusion that the provisions of the amended Transfer Act, taken together, indicate that the Board of Review remains a congressional agent and that it exercises power in violation of the doctrine of the separation of powers; accordingly, we affirm the district court's judgment. We direct, however, that actions taken by the Board to this date not be invalidated automatically on the basis of our decision. *See Buckley v. Valeo*, 424 U.S. 1, 142 (1976) (past acts of invalidly constituted Commission accorded "*de facto* validity").

So ordered

[Filed Oct. 24, 1994]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-7036

JOHN W. HECHINGER, JR., *et al.*,
Appellees,

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
Appellants.

BEFORE: Buckley, Williams and Rogers, Circuit Judges

ORDER

Upon consideration of Appellants' Unopposed Emergency Motion for Extension of Stay of Judgment and Effective Date of Opinion and Order of the District Court, and For Stay of Mandate and Effective Date of Opinion and Order of This Court Pending Petition for Writ of Certiorari and Possible Congressional Action, it is

ORDERED, by the Court, that the stay granted by this Court applicable to the district court's judgment and the effective date of the district court's opinion and order remain in force pending the later of the filing of and final disposition of the case by the Supreme Court on a petition for a Writ of Certiorari; or, should the Supreme Court decline to issue a Writ of Certiorari, 60 days after such denial of certiorari; or until March 31, 1995; it is

FURTHER ORDERED, by the Court, that the mandate and effective date of this Court's opinion and order

dated September 27, 1994 be stayed pending the later of the filing of and final disposition of the case by the Supreme Court on a petition for a Writ of Certiorari; or, should the Supreme Court decline to issue a Writ of Certiorari, 60 days after such denial of certiorari; or until March 31, 1995.

Per Curiam
FOR THE COURT:

RON GARVIN
Clerk

By: /s/ Robert A. Bonner
ROBERT A. BONNER
Deputy Clerk

[Filed Jan. 31, 1994]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92-556 (JHG)

JOHN W. HECHINGER, *et al.*,
Plaintiffs,

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
Defendants.

MEMORANDUM OPINION AND ORDER

Plaintiffs, John W. Hechinger, Sr., Craig H. Baab, and Citizens for the Abatement of Aircraft Noise, Inc., initiated this action challenging the constitutionality of defendant Board of Review. The Board of Review is an entity with the power to review certain actions of defendant Metropolitan Washington Airports Authority ("Airports Authority"); which was created to operate the metropolitan Washington airports located in the Virginia suburbs. Plaintiffs allege that the Board of Review violates the doctrine of separation of powers and that its members are appointed in violation of the Appointments Clause [1] and serve in violation of the Incompatibility and Ineligibility Clause.[2]

Through this action, plaintiffs seek: (1) a declaration that the Board of Review is unconstitutional; and (2) an order enjoining the Board of Review from exercising its review authority and enjoining the Airports Authority from performing any actions that it is required to submit to the Board of Review. The parties filed cross-motions for summary judgment. In addition, the United States

[1] United States Const. Art. II, § 2, cl. 2.

[2] United States Const. Art. I, § 6, cl. 2.

filed a statement of interest pursuant to 28 U.S.C. § 517, in which it offered its views supporting the plaintiffs' position that the Board of Review is unconstitutional. For the reasons expressed below, plaintiffs' motion for summary judgment is granted and defendants' motion for summary judgment is denied.

I. *Background*

These parties are before this Court for the second time to litigate the constitutionality of the Board of Review. Although the new Board of Review will be evaluated without any taint from the earlier proceedings, it is necessary to review certain details from the earlier litigation to properly understand the present action. *See Century Communications Corp. v. FCC*, 835 F.2d 292, 299 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1032 (1988).

The federal government historically maintained control over the two metropolitan Washington airports in the Virginia suburbs, Washington National Airport ("National") and Dulles International Airport ("Dulles"). In the mid-1980's, however, the Secretary of Transportation ("Secretary") determined that it was necessary to shift control over these airports away from the federal government to ease the burden of financing capital improvements. The Secretary recommended that the federal government transfer control over these airports to a regional authority and appointed an advisory commission to develop a plan to create this authority.

The advisory commission recommended that this regional authority be created by a congressionally approved compact between Virginia and the District of Columbia. The advisory commission further recommended that an eleven-member Board of Directors, composed of individuals who were neither elected nor appointed officials, govern the authority, and that ten of these directors reside in the metropolitan Washington area. These recommenda-

tions were intended not only to ensure the non-political nature of the authority but to protect local interests as well.

In accordance with the Metropolitan Washington Airports Act of 1986, Pub. L. No. 99-591, 99th Cong., 2d Sess. (1986) ("Transfer Act") (codified at 49 U.S.C. App. §§ 2451-2461), Virginia and the District of Columbia passed legislation to establish the Airports Authority. *See* 1985 Va. Acts, ch. 598, as amended by 1987 Va. Acts ch. 665; 1985 D.C. Law 6-67, as amended by 1987 D.C. Law 7-18. The Transfer Act authorized the transfer of operating control over National and Dulles to the Airports Authority, which was to be independent of the federal, Virginia, and District of Columbia governments. 49 U.S.C. App. § 2456(a)(6). The Transfer Act established a Board of Directors to govern the Airports Authority, but mandated the creation of the Board of Review to review certain actions of the Board of Directors.

The original Board of Review was composed of nine members of Congress, eight of whom served on specified congressional committees and none of whom could be from Maryland, Virginia, or the District of Columbia. 49 U.S.C. App. § 2456(f)(1). The Board of Directors had to submit many core decisions to the Board of Review for approval, including the adoption of its budget, authorization of bonds, promulgation of regulations, adoption of a master plan, and the appointment of its chief executive officer. 49 U.S.C. App. § 2456(f)(4)(B). Significantly, the Board of Review could veto any of these core decisions. 49 U.S.C. App. § 2456(f)(4)(D). Moreover, the legislation provided that the Airports Authority could not independently carry out any of these core functions if a court declared the Board of Review unconstitutional. 49 U.S.C. § 2456(h).

The Airports Authority assumed operating responsibility of National and Dulles in mid-1987, pursuant to a

lease that contained all of the provisions of the Transfer Act. Subsequently, plaintiffs filed a lawsuit challenging the constitutionality of the original Board of Review. In that earlier lawsuit, *Citizens for the Abatement of Aircraft Noise, Inc. v. Metropolitan Washington Airports Authority*, 718 F. Supp. 974 (D.D.C. 1989), *rev'd in part*, 917 F.2d 48 (D.C. Cir. 1990), *aff'd*, 111 S. Ct. 2298 (1991) [hereinafter *"CAAN I"*], the Supreme Court held that the Board of Review, as then comprised, was unconstitutional.[3] The Court determined that the Board of Review exercised sufficient federal power to mandate separation of powers scrutiny even though the Airports Authority was technically a creature of state law. 111 S. Ct. at 2306. Separation of powers scrutiny was necessary because transfer of control over National and Dulles was conditioned on the creation of the Board of Review and the federal government has a strong and continuing interest in the operation of these airports. *Id.* at 2307.

The Supreme Court further determined that the Board of Review was an agent of Congress. Membership on the Board of Review was restricted to members of Congress, all but one of whom served on particular committees. Thus, the Board of Review was composed exclusively of members of Congress and Congress could control who served on the Board of Review by altering the membership on the relevant committees. In essence, Congress had the power to appoint and remove members of the Board of Review. *Id.* at 2307-08.

In sum, the Court invalidated the Board of Review because it was "an entity created at the initiative of Congress, the powers of which Congress has delineated, the purpose of which is to protect an acknowledged federal interest, and membership in which is restricted to con-

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[3] In the earlier lawsuit between these parties, the United States filed a statement of interest supporting the defendants' position that the Board of Review was constitutional.

gressional officials." *Id.* at 2308. The Board of Review was simply an improper attempt by Congress either to assume executive responsibilities or to exercise legislative authority in violation of the bicameralism and presentment requirements of Article I, Section 7. *Id.* at 2312.

In response to the Supreme Court's decision, Congress passed the Metropolitan Washington Airports Act Amendments of 1991, Pub. L. No. 102-240, Title VII, 105 Stat. 2197 (Dec. 18, 1991) ("1991 Amendments"). The 1991 Amendments retained the Board of Review, but altered its composition, the qualifications for membership, and its powers.[4] President Bush signed the 1991 Amendments into law on December 18, 1991, but expressed concern about the constitutionality of these provisions in his signing statement:

> During congressional consideration of amendments intended to cure the defects found by the Supreme Court, the Administration expressed the view that the new Board of Review created by Title VII would violate the Appointments Clause of the Constitution. We adhere to this view, noting that the matter will now be resolved in court.

Plaintiffs' Motion for Summary Judgment, Exhibit A.

The new Board of Review is composed of nine individuals, all of whom the Board of Directors must select from lists submitted by the Speaker of the House ("Speaker") and the President *pro tempore* of the Senate ("President *pro tempore*"). 1991 Amendments § 7002 (a)(1). Although the Board of Directors may request additional recommendations, there is no requirement that the Speaker and the President *pro tempore* submit more names than the number of vacancies on the Board of

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[4] The 1991 Amendments retained many aspects of the old Board of Review, notably the provision that the Airports Authority cannot perform any action subject to oversight by the Board of Review if a court declares the Board of Review unconstitutional.

Review. *Id.* Further, the Board of Review is not expressly limited to members of Congress. To qualify for membership on the Board of Review, a person must: (1) have experience in aviation matters and in addressing the needs of airport users; (2) be a frequent user of Metropolitan Washington Airports; and (3) be a registered voter in a jurisdiction other than Virginia, Maryland, or the District of Columbia. 1991 Amendments § 7002(b)(2)(C). In addition, members may be removed for cause by a two-thirds vote of the Board of Directors. 1991 Amendments § 7002(f)(1).

The 1991 Amendments also altered the power of the Board of Review. The Board of Review no longer has the express veto power that its predecessor enjoyed. Instead, the new Board of Review has the power to make "recommendations" to the Board of Directors regarding each of the core functions over which the original Board of Review had a veto power plus several additional core functions, such as the award of a contract, the design of a terminal, and transactions involving land. 1991 Amendments §§ 7002(d)(1), (2). If the Board of Review makes such a recommendation, the proposed action may take effect only if the Board of Directors adopts the recommendation or if the Board of Directors submits the proposed action to Congress and waits a specified number of days. 1991 Amendments § 7002(d)(2)(D).

II. *Discussion*

Summary judgment is appropriate when there is "no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "The inquiry performed is the threshold inquiry of determining whether there is a need for trial—whether, in other words, there are any genuine issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477

U.S. 242, 250 (1986). On considering a motion for summary judgment, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. At the same time, however, Rule 56 places a burden on the nonmoving party to "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

Plaintiffs claim that the 1991 Amendments did not remedy the constitutional defects of the Transfer Act. Specifically, plaintiffs make two related challenges to the new Board of Review. First, plaintiffs allege that the new Board of Review is "a congressional agent that may not, under the Constitution, exercise retained federal power to control the actions of the Airports Authority." Memorandum in Support of Plaintiffs' Motion for Summary Judgment ("Plaintiff's Mem.") at 18. Second, plaintiffs assert that members of the Board of Review are selected in violation of the Appointments Clause. *Id.* at 18-19.[6] Defendants, in contrast, claim that the new Board of Review is merely "an advisory body, whose task is to make recommendations to the Airports Authority." Memorandum of Points and Authorities in Support of Defendants' Cross-Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment ("Defendants' Mem.") at 2. As such, defendants assert that the new Board of Review neither is an agent of Congress nor exercises significant federal authority. *Id.*

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[6] The decision today makes it unnecessary to address plaintiffs' corollary claim that members of Congress serve on the Board of Review in violation of the Incompatibility and Ineligibility Clause, U.S. Const. Art. I, § 6, cl. 2.

A. *The Powers of the Board of Review*

Plaintiffs first argue that the Board of Review cannot exercise its prescribed functions consistent with the Constitution. This challenge focuses on the doctrine of separation of powers and the requirements of biocameralism and presentment. The doctrine of separation of powers prohibits Congress, either directly or through its agents, from exercising executive power. *See Bowsher v. Synar*, 478 U.S. 714, 733 (1986). Similarly, Congress, either directly or through its agents, cannot exercise legislative power without complying with the requirements of bicameralism and presentment. *CAAN I*, 111 S. Ct. at 2312; *see INS v. Chadha*, 462 U.S. 919, 951 (1983).

To demonstrate that the Board of Review is constitutionally deficient, therefore, plaintiffs must show that the Board of Review is an agent of Congress and that it exercises some type of federal power. Plaintiffs have established both elements.

To reiterate, briefly, to qualify for membership on the Board of Review, a person must: (1) have experience in aviation matters and in addressing the needs of airport users; (2) be a frequent user of the metropolitan Washington airports; and (3) not to be a registered voter in Maryland, Virginia, or the District of Columbia. 1991 Amendments § 7002(b)(2)(C). The Airports Authority selects the members of the Board of Review, but it can only choose those individuals that either the Speaker or the President *pro tempore* recommend. If the Airports Authority is dissatisfied with the candidates recommended, it can request additional names for consideration. The Airports Authority can remove members of the Board of Review for cause by a two-thirds vote.

These criteria and conditions create an entity that is unquestionably an agent of Congress. Although Congress divested itself of removal power, it retained appointment power and ensured that many members of Congress—and few others—will be eligible to serve on the Board of

Review. Further, and more fundamentally, either the Speaker or the President *pro tempore* must select every member of the Board of Review. Although the Airports Authority may request additional names for consideration, it is forced to choose only those individuals recommended by Congress. Congress, therefore, retained extraordinary control over the composition of the Board of Review; the Board of Directors is without power to appoint anyone who has not received a recommendation from the congressional leadership.

Moreover, Congress clearly did not address the concerns that the Supreme Court expressed in *CAAN I*. In *CAAN I*, the Court declared that the original Board of Review mandated separation of powers review because it was "an entity created at the initiative of Congress, the powers of which Congress has delineated, the purpose of which is to protect an acknowledged federal interest, and membership in which is restricted to congressional officials." 111 S. Ct. at 2308. Pursuant to the 1991 Amendments, the Board of Review is still an entity created at the initiative of Congress, the powers of which Congress has delineated, and the purpose of which is to protect an acknowledged federal interest. The only change is that membership is not restricted to congressional officials, but rather to those selected by congressional officials. This superficial change is insufficient to insulate the Board of Review from constitutional scrutiny.[6]

The more provocative question is whether the Board of Review exercises federal power. And the answer is "yes." Pursuant to the 1991 Amendments, the Board of Review no longer has the power to veto actions of the Board of Directors. The Board of Review does, however, exercise significant control over the Airports Authority and management over its core aspects of operation through its power to make "recommendations." In fact,

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[6] Interestingly, eight of the nine members of the original Board of Review were promptly appointed to the new Board of Review.

the new Board of Review has power to influence more actions than the old Board of Review. In addition to control over the adoption of a budget, authorization for the issuance of bonds,[7] the promulgation of regulations, the adoption of a master plan, and the appointment of a chief executive officer, the new Board of Review can control the award of contracts, any terminal design or modification, and any land transaction. 49 U.S.C. App. § 2456(f)(4)(B); 1991 Amendments § 7002(d)(1)(E).

Upon receipt of a "recommendation" from the Board of Review, the Airports Authority has two choices. It can adopt the recommendation, at which point the proposal with the recommendation takes effect. 1991 Amendments § 7002(d)(2)(D). If the Airports Authority does not adopt a recommendation, it must transmit a detailed description of the proposed action to Congress. The action cannot take effect until after the expiration of sixty calendar days, "excluding Saturdays, Sundays, holidays, and any day on which neither House of Congress is in session because of an adjournment *sine die*, a recess of more than 3 days, or an adjournment of more than 3 days," unless Congress acts sooner. 1991 Amendments § 7002(d)(2)(D)(ii). This report and wait provision, in effect, gives the Board of Review power to delay an action of the Board of Directors by as long as six months.

The Airports Authority has a choice: accept the "recommendation" of the Board of Review for immediate enactment of the proposal, or submit the proposal to Congress, wait a potentially lengthy period of time, and hope that Congress does not disapprove the proposal. In short, the Airports Authority must disapprove the pro-

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[7] The power to affect the issuance of bonds is particularly critical since the primary reason for the creation of the Airports Authority was because it would have the "power to raise money by selling tax exempt bonds" to finance "necessary capital improvements." *CAAN I*, 111 S. Ct. at 2302.

posal. In short, the Airports Authority must either bow to the will of the Board of Review, or risk the time and uncertainty of congressional action. This power is far more than merely "advisory" as defendants claim; it gives the Board of Review the power to coerce the Airports Authority to comply with any "recommendation." The Constitution does not permit this agent of Congress to play such an influential role in controlling the actions of the Airports Authority. *See Lear Siegler, Inc. v. Lehman*, 842 F.2d 1102, 1108 (9th Cir. 1988) (stating that if "Congress 'in effect has retained control,' its action and the statuory provision on which it is based are unconstitutional") (quoting *Bowsher*, 106 S. Ct. at 3192), *rev'd on other grounds*, 893 F.2d 205 (9th Cir. 1989) (en banc).

B. *The Appointments Clause*

Plaintiffs next argue that the members of the Board of Review are selected in violation of the Appointments Clause. The Appointments Clause dictates that the President shall appoint all officers of the United States. U.S. Const., Art. II, § 2, cl. 2. Principal officers must be selected with the advice and consent of the Senate, and the appointment of inferior officers is vested in the President alone. *Id.; see Buckley v. Valeo*, 424 U.S. 1 (1976). The President does not select the members of the Board of Review; they are selected by the Airports Authority from lists provided by the Speaker and President *pro tempore*. If the Board of Review exercises significant executive authority,[8] the method of appointing its members is constitutionally defective. *Id.* at 126; *see Freytag v. Commissioner of Internal Revenue*, 111 S. Ct. 2631, 2640 (1991).

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[8] In the earlier lawsuit, the Court of Appeals noted that the actions of the Board of Review are "quintessentially executive." 917 F.2d at 56. The sole inquiry here, therefore, is whether the Board of Review exercises significant federal authority.

Defendants assert that there is no Appointments Clause violation because the Board of Review is a nonfederal, interstate agency. Defendants' Mem. at 33-34. This argument clearly is without merit. In *CAAN I*, the Supreme Court determined that "the fact that the Board of Review was created by state enactments is not enough to immunize it from separation-of-powers review." *CAAN I*, 111 S. Ct. at 2306-07. Defendants do not advance any reason why an Appointments Clause analysis should be any different. The strong federal interest of the Airports Authority plainly warrants Appointments Clause review.

Defendants also argue that the Board of Review does not exercise significant federal authority. Defendants' Mem. at 33. The Court has already considered and rejected this argument in the context of separation of powers and holds also that the members of the Board of Review are selected in violation of the Appointments Clause.

II. *Conclusion*

The Board of Review plays a pivotal role in the administration of the Metropolitan Washington Airports Act. It exercises significant executive powers delegated to it by Congress, which created the Board of Review and over which Congress continues to wield considerable control. This unconstitutionally violates separation of powers principles and the Appointments Clause.

Since the provisions regarding the Board of Review in the Metropolitan Washington Airports Act Amendments of 1991 have this date been found unconstitutional and the Board of Review must be, and is, invalidated, the MWAA is without authority "thereafter" to carry out those actions the Board of Review is required to oversee. 49 U.S.C.A. App. § 2456(h). It is, therefore, essential to direct (as did the Circuit Court) that "actions taken by the Board [of Review] to this date not be invalidated automatically on the basis of [this] decision."

CAAN I, 917 F.2d at 57-58; *see Buckley v. Valeo*, 424 U.S. 1, 142 (1976).

While there shall be no stay for the reasons noted herein, the Court clearly recognizes the impact of this decision and the immediate jeopardy of operations at both Washington National Airport and Dulles International Airport. I strongly urge that prompt review be given this matter in the Circuit Court and/or in Congress.

Therefore, for the reasons stated above, it is hereby

ORDERED that plaintiffs' motion for summary judgment is granted; it is

FURTHER DECLARED that the Board of Review is unconstitutional and its actions invalid from the date of this order; it is

FURTHER ORDERED that defendants' motion for summary judgment is denied.

IT IS SO ORDERED.

January 31, 1994

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

[Filed Feb. 15, 1994]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92-556 (JHG)

JOHN W. HECHINGER, *et al.*,
Plaintiffs,

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
Defendants.

MODIFICATION OF JANUARY 31, 1994
MEMORANDUM OPINION AND ORDER

Defendants, supported by the United States, urge the Court to reconsider its January 31, 1994, Memorandum Opinion and Order ("Opinion and Order") insofar as that decision denied a stay of the judgment. Plaintiffs oppose this request, arguing that a stay would permit defendants to continue their unconstitutional actions and, ultimately, cause irreparable harm to plaintiffs. Alternatively, plaintiffs assert that any stay be limited in duration to no more than thirty days to permit Congress to act and the defendants to seek expedited review in the Court of Appeals.

This Court recognizes its right to grant a stay pending appeal in cases in which it has declared a statute unconstitutional. *See Bowen v. Kendrick*, 483 U.S. 1304, 1304-05 (1987). Although initially inclined to deny the stay, the Court will re-examine that decision in light of the relevant factors: (1) the likelihood that the party seeking the stay will prevail on appeal; (2) the likelihood that party seeking the stay will be irreparably harmed; (3) the likelihood of harm to others if the stay is granted;

and (4) the public interest in granting the stay. *Cuomo v. United States Nuclear Regulatory Comm'n,* 772 F.2d 972, 974 (D.C. Cir. 1985) (citing *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.,* 559 F.2d 841, 843 (D.C. Cir. 1977).

It is, of course, difficult for the Court to conclude that defendants are likely to succeed on appeal. Nonetheless, recognizing the presumption of constitutionality of congressional action and that the other factors weigh in defendants' favor, a limited stay will be granted.

The immediate harm to defendants will indeed be irreparable absent a limited stay. Many capital improvement projects, an extensive concession contract, and other airport improvements were pending before the Board of Review on the date of this Court's order. These projects, which benefit not only the defendants but the public in its entirety, cannot proceed in the absence of a limited stay. Further, defendants have assured the Court that, as to these pending matters, "the Board of Review *had not and will not make a recommendation* . . . ." Memorandum of Points and Authorities in Support of Defendants' Motion for Modification or Clarification of the Court's Opinion and Order of January 31, 1994 and for Stay of the Judgment and of the Effective Date of the Opinion and Order, Pending Final Resolution of the Appeal at 3 (emphasis added).

On the other hand, any harm to plaintiffs is not immediate. Plaintiffs admit that they "may not have a particular interest" in the pending matters, but state that "A some point, the major decisions solidifying the expansionist course will be completed." Plaintiffs' Opposition to Defendants' Motion for a Stay and Motion for Modification or Clarification of this Court's Opinion and Order at 2, 6. This speculative harm does not outweigh the immediate harm to defendants in the absence of a stay.

This case, however, does not justify the indefinite stay that defendants seek. Such a stay might ultimately cause irreparable harm to plaintiffs as airport expansion crosses a point of no return. Further, and more critically, an indefinite stay would remove any incentive for defendants to seek expedited review in the Court of Appeals or in Congress.

Upon balancing all of the relevant factors, therefore, a stay of seventy-five (75) days from the date of the original Opinion and Order is warranted. Such a stay is long enough to prevent irreparable harm to defendants, and, at the same time, is not too long such that it risks irreparable harm to plaintiffs. It also will permit the Metropolitan Washington Airports Authority ("MWAA") to continue its progress as to those matters for which the Board of Review was not going to exercise its constitutionally offensive power to make "recommendations." Further, a stay of seventy-five days will permit defendants to seek expedited review in the Court of Appeals and/or immediately bring these issues before Congress. Of course, defendants are in no way precluded from making an application to the Court of Appeals for an enlargement of this stay, if and when appropriate.

The Court reiterates its earnest hope that prompt action is taken on this matter. Accordingly, it is hereby

ORDERED that, pursuant to this Court's January 31, 1994 Opinion and Order, all actions taken by the MWAA that were approved by the Board of Directors and submitted to the Board of Review before January 31, 1994, for which the time for review had expired prior to such effective date without the Board of Review having made any recommendation thereon, remain lawful, valid, and effective, and the MWAA can perform such actions, including the issuance of bonds that have been previously authorized; it is

FURTHER ORDERED that this Court's January 31, 1994 Opinion and Order is modified as follows: actions

taken by the Board of Directors of the MWAA, which were submitted to the Board of Review before the effective date of this Court's Opinion and Order and which were still pending before the Board of Review on the effective date of such Opinion and Order but concerning which the Board of Review had not made any recommendation, and will not be making any recommendation, are lawful, valid, and effective, and the MWAA can perform such actions, including the issuance of bonds that have been previously authorized; it is

FURTHER ORDERED that the issuance of the Judgment and the effective date of the Court's Opinion and Order dated January 31, 1994 are stayed from the date thereof for a period of seventy-five (75) days provided that defendants file a Notice of Appeal in the United States Court of Appeals for the District of Columbia Circuit on or before February 22, 1994.

IT IS SO ORDERED.

February 15, 1994

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

[Filed Apr. 11, 1994]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-7036

JOHN W. HECHINGER, JR.; CRAIG H. BAAB;
CITIZENS FOR THE ABATEMENT OF AIRCRAFT NOISE, INC.

v.

METROPOLITAN WASHINGTON AIRPORT AUTHORITY;
BOARD OF REVIEW,

Appellants

BEFORE: Buckley, Williams and Rogers, Circuit Judges

ORDER

Upon consideration of appellants' motion for stay pending appeal, the opposition thereto and the reply; and the statement by the United States in support of the motion for stay pending appeal, it is

ORDERED that the district court's judgment and the effective date of the district court's January 31, 1994 opinion and order be stayed until fifteen days after this court renders its decision in this appeal. *See Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *D.C. Circuit Handbook of Practice and Internal Procedures* 66-67 (1994).

Per Curiam

FOR THE COURT:
RON GARVIN
Clerk

By: /s/ Cheri Carter
Deputy Clerk

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

Article I, section 1:

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article I, section 6, clause 2:

> No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Article I, section 7, clause 2, in pertinent part:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.

Article I, section 7, clause 3:

> Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Article II, section 1, in pertinent part:

> The executive Power shall be vested in a President of the United States of America.

Article II, section 2, clause 2, in pertinent part:

> [H]e shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Article IV, section 3, clause 2:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SUBCHAPTER III—METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

49 U.S.C. § 2451 (1988). Findings

The Congress finds that—

(1) the two federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of a perceived limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

(Pub.L. 99-500, Title VI, § 6002, Oct. 18, 1986, 100 Stat. 1783-373; Pub.L. 99-591, Title VI, § 6002, Oct. 30, 1986, 100 Stat. 3341-376.)

§ 2452. Purpose

(a) In general

It is therefore declared to be the purpose of the Congress in this subchapter to authorize the transfer of operating responsibility under long-term lease of the two Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control, management, operation, and the development of these important transportation assets.

(b) Inclusion of BWI not precluded

Nothing in this subchapter shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

(Pub.L. 99-500, Title VI, § 6003, Oct. 18, 1986, 100 Stat. 1783-374; Pub.L. 99-591, Title VI, § 6003, Oct. 30, 1986, 100 Stat. 3341-377.)

§ 2453. Definitions

In this subchapter;

(1) Administrator

The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) Airports Authority

The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 2456 of this title.

(3) Employees

The term "employees" means all permanent Federal Aviation Administration personnel employed on the date the lease under section 2454 of this title takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) Metropolitan Washington Airports

The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) Secretary

The term "Secretary" means the Secretary of Transportation.

(6) Washington Dulles International Airport

The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public air-

port on or in the vicinity of the District of Columbia," approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) Washington National Airport

The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes," approved June 29, 1940 (54 Stat. 686).

(Pub.L. 99-500, Title VI, § 6004, Oct. 18, 1986, 100 Stat. 1783-374; Pub.L. 99-591, Title VI, § 6004, Oct. 30, 1986, 100 Stat. 3341-378.)

§ 2454. Lease of Metropolitan Washington Airports

(a) Authority to enter into lease

The Secretary is authorized to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority. Authority to enter into a lease and agreement under this section shall lapse two years after October 18, 1986.

(b) Payments

(1) Lease payments

The lease shall provide for the Airports Authority to pay to the general fund of the Treasury annually an amount, computed using the GNP Price Deflator, to equal $3,000,000 in 1987 dollars. The Secretary and the Airports Authority may renegotiate the level of lease payments attributable to inflation costs every ten years.

(2) Retirement obligations

(A) Discontinued service

Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of Title 5 of employees who elect not to transfer to the Airports Authority.

(B) Unfunded liability

Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (i) the future cost of benefits payable from the Fund and due the employees covered under section 2457(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 2457(e) of this title. In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

(c) Minimum terms and conditions

The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) Operation of airports as a unit

The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2) Airport purposes

The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this subchapter is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) AIP requirements

The Airports Authority shall be subject to the requirements of section [49 U.S.C.A. § 2210(a)] and the assurances and conditions required of grant recipients under such Act [49 U.S.C.A. § 2201 et seq.] as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act [49 U.S.C.A. § 2210(a)(12)], all revenues generated by the Metropolitan Washington Airports shall be ex-

pended for the capital and operating costs of such airports.

(4) Contracts

In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5) Continuation of regulations

(A) In general

Except as provided in subparagraph (B) all regulations of the Metropolitan Washington Airports (14 C.F.R. 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) Exceptions

The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) Operations

The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on October 18, 1986 and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) Transfer of rights, liabilities, and obligations

(A) In general

Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and oblgations (tangible and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) Exceptions

The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(C) Payments into Employees' Compensation Fund

The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of Title 5 for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of Title 5 with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(D) Collective bargaining rights

The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) Audits

The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under

such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) Code of ethics

The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by its board of directors and employees.

(9) Restriction on use of certain revenues

Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) General aviation fees

The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(11) Other terms

The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this subchapter.

(d) Submission to Congress

The Secretary shall submit the lease entered into under this section to Congress. The lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, whichever occurs later.

(e) Enforcement of lease provisions

The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

(Pub.L 99-500, Title VI, § 6005, Oct. 18, 1986, 100 Stat. 1783-375; Pub.L. 99-591, Title VI, § 6005, Oct. 30, 1986, 100 Stat. 3341-378.)

§ 2455. Capital improvements, construction, and rehabilitation

(a) Improvements

It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports

within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 2456 of this title for any such improvement, construction, or rehabilitation.

(b) Secretary's assistance

The Secretary shall assist the three airports serving the Washington, D.C. metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

(Pub.L. 99-500, Title VI, § 6006, Oct. 18, 1986, 100 Stat. 1783-378; Pub.L. 99-591, Title VI, § 6006, Oct. 30, 1986, 100 Stat. 3341-381.)

§ 2456. Airports Authority

(a) Powers conferred by Virginia and the District of Columbia

The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) Purpose

The Airports Authority shall be—

(1) independent of the Commonwealth of Virginia and its local government, the District of Columbia, and the Federal Government; and

(2) a political subdivision constituted solely to operate and improve both Metropolitan Washington

Airports as primary airports serving the Metropolitan Washington area.

(c) General authorities

The Airports Authority shall be authorized—

(1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—

(A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or in part from the proceeds of such bonds;

(3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) to levy fees or other charges; and

(5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on October 18, 1986.

(d) Conflict-of-interest provisions

The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or

otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirements of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 2454(c)(8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under which an exception may be granted.

(e) Board of directors

(1) Appointment

The Airports Authority shall be governed by a board of directors of 11 members, as follows:

(A) five members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governor of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) Restrictions

Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

(3) Terms

Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 4 years.

(4) Removal of Presidential appointees

A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) Required number of votes

Seven votes shall be required to approve bond issues and the annual budget.

(f) Board of Review

(1) Composition

The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review of the Air-

ports Authority. Such Board of Review shall be established by the board of directors and shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) two members of the Public Works and Transportation Committee and two members of the Appropriations Committee of the House of Representatives from a list provided by the Speaker of the House;

(B) two members of the Commerce, Science, and Transportation Committee and two members of the Appropriations Committee of the Senate from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. A member of the House of Representatives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

(2) Terms

Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) shall be appointed for terms of six years, except that of the members first appointed, one member under each of subparagraphs (A) and (B) shall be appointed for a term of two years and one member under each of subparagraphs (A) and (B) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (C)

shall be appointed for terms of two years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(3) Procedures

The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each year and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

(4) Disapproval procedure

(A) Submission required

An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to be become effective.

(B) Actions affected

The following are the actions referred to in subparagraph (A):

(i) the adoption of an annual budget;

(ii) the authorization for the issuance of bonds;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan, including any proposal for land acquisition; and

(v) the appointment of the chief executive officer.

(C) 30-day disapproval period

If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

(D) Effect of disapproval

An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) Request for consideration of other matters

The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(6) Participation in meetings of Airports Authority

Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(7) Staff

The Board of Review may hire two staff persons to be paid by the Airports Authority. The Airports

Authority shall provide such clerical and support staff as the Board may require.

(8) Liability

A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(g) Certain actions to be taken by regulation

Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) Limitation on authority

If the Board of Review established under subsection (f) of this section is unable to carry out its functions under this subchapter by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by paragraph [1] (f) (4) of this section to be submitted to the Board of Review.

(Pub.L. 99-500, Title VI, § 6007, Oct. 18, 1986, 100 Stat. 1783-379; Pub.L. 99-591, Title VI, § 6007, Oct. 30, 1986, 100 Stat. 3341-382.)

§ 2457. Federal employes at Metropolitan Washington Airports

(a) Employee protection

Not later than the date the lease under section 2454 of this title takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests of employees during

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[1] So in original. Probably should be "subsection".

the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 2454 of this title takes effect except in cases or reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to transferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three health insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonably comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

(b) Labor agreements

(1) Adoption

The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 2454 of this title takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of Title 5.

(2) Continuation

The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) Rights of terminated employees

Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 2454 of this title takes effect shall be entitled, as a condition of any lease entered into in accordance with section 2454 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

(d) Annual and sick leave

Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of Title

5, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 6005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of Title 5.

(e) Civil Service retirement

Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 2454 of this title takes effect is subject to subchapter III, of chapter 83 of Title 5 or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States Government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency fo purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) Separated employees

An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

(g) Access to records

The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under section 2454 of this title takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

(Pub.L. 99-500, Title VI, § 6008, Oct. 18, 1986, 100 Stat. 1783-382; Pub.L. 99-591, Title VI, § 6008, Oct. 30, 1986, 100 Stat. 3341-385.)

§ 2458. Relationship to and effect of other laws

(a) Other laws

In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to Federal law as any other airport except as otherwise provided in this subchapter, during the period that the lease authorized by section 2454 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); [49 U.S.C.A. § 2201 et seq.]; and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes," approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia," approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes,"

approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) Inapplicability of certain laws

The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of the fee simple title to such airports or by reason of the authority of the Board of Review under subsection 2456(f) of this title.

(c) Police power

The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d) Planning

(1) In general

The authority of the National Capital Planning Commission under section 71d of Title 40 shall not apply to the Airports Authority.

(2) Consultation

The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development

that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e) Operation limitations

(1) High Density Rule

The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on October 18, 1986 and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) Annual passenger limitations

The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on October 18, 1986.

(Pub.L. 99-500, Title VI, § 6009, Oct. 18, 1986, 100 Stat. 1783-384; Pub.L. 99-591, Title VI, § 6009, Oct. 30, 1986, 100 Stat. 3341-387.)

§ 2459. Authority to negotiate extension of lease

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 2454(a) of this title.

(Pub.L. 99-500, Title VI, § 6010, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6010, Oct. 30, 1986, 100 Stat. 3341-388.)

§ 2460. Separability

Except as provided in section 2456(h) of this title, if any provision of this subchapter or the application thereof

to any person or circumstance, is held invalid, the remainder of this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub.L. 99-500, Title VI, § 6011, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6011, Oct. 30, 1986, 100 Stat. 3341-388.)

§ 2461. Nonstop flights

Perimeter rule

An air carrier may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,250 statute miles away from Washington National Airport.

(Pub.L. 99-500, Title VI, § 6012, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6012, Oct. 30, 1986, 100 Stat. 3341-388.)

TITLE VII—AIR TRANSPORTATION

Sec. 7001. Short Title.

This title may be cited as the "Metropolitan Washington Airports Act Amendments of 1991".

Sec. 7002. Board of Review

(a) COMPOSITION.—Section 6007(f)(1) of the Metropolitan Washington Airports Act of 1986 (49 U.S.C. App. 2456(f)(1)) is amended to read as follows:

"(1) COMPOSITION.—The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review of the Airports Authority. The Board of Review shall be established by the board of directors to represent the interests of users of the Metropolitan Washington Airports and shall be composed of 9 members appointed by the board of directors as follows:

"(A) 4 individuals from a list provided by the Speaker of the House of Representatives.

"(B) 4 individuals from a list provided by the President pro tempore of the Senate.

"(C) 1 individual chosen alternately from a list provided by the Speaker of the House of Representatives and from a list provided by the President pro tempore of the Senate.

In addition to the recommendations on a list provided under this paragraph, the board of directors may request additional recommendations.".

(b) TERMS AND QUALIFICATIONS.—Section 6007(f)(2) of such Act is amended to read as follows:

"(2) TERMS, VACANCIES, AND QUALIFICATIONS.—

"(A) TERMS.—Members of the Board of Review appointed under paragraphs (1)(A)

and (1)(B) shall be appointed for terms of 6 years. Members of the Board of Review appointed under paragraph (1)(C) shall be appointed for terms of 2 years. A member may serve after the expiration of that member's term until a successor has taken office.

"(B) VACANCIES.—A vacancy in the Board of Review shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term.

"(C) QUALIFICATIONS.—Members of the Board of Review shall be individuals who have experience in aviation matters and in addressing the needs of airport users and who themselves are frequent users of the Metropolitan Washington Airports. A member of the Board of Review shall be a registered voter of a State other than Maryland, Virginia, or the District of Columbia.

"(D) EFFECT OF MORE THAN 4 VACANCIES.—At any time that the Board of Review established under this subsection has more than 4 vacancies and lists have been provided for appointments to fill such vacancies, the Airports Authority shall have no authority to perform any of the actions that are required by paragraph (4) to be submitted to the Board of Review.".

(c) PROCEDURES.—Section 6007(f)(3) of such Act is amended by inserting "and for the selection of a Chairman" after "proxy voting".

(d) REVIEW PROCEDURE.—

(1) ACTIONS SUBJECT TO REVIEW.—Section 6007 (f)(4)(B) of such Act is amended—

(A) by inserting "and any amendments thereto" before the semicolon at the end of clause (i);

(B) by inserting "and an annual plan for issuance of bonds and any amendments to such plan" before the semicolon at the end of clause (ii);

(C) in clause (iv) by striking ". including any proposal for land acquisition; and" and inserting a semicolon;

(D) by striking the period at the end of clause (v) and inserting a semicolon; and

(E) by adding at the end the following new clauses:

"(vi) the award of a contract (other than a contract in connection with the issuance or sale of bonds which is executed within 30 days of the date of issuance of the bonds) which has been approved by the board of directors of the Airports Authority;

"(vii) any action of the board of directors approving a terminal design or airport layout or modification of such design or layout; and

"(viii) the authorization for the acquisition or disposal of land and the grant of a long-term easement.".

(2) RECOMMENDATIONS.—Section 6007(f)(4) of such Act is amended by striking subparagraphs (C) and (D) and inserting the following new subparagraphs:

"(C) RECOMMENDATIONS.—The Board of Review may make to the board of directors recommendations regarding an action within either (i) 30 calendar days of its submission under this paragraph; or (ii) 10 calander days (excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) of its submission under this paragraph; whichever period is longer. Such reccommendations may include a recommendation that the action not take effect. If the Board of Review does not make a recommendation in the applicable review period under this subparagraph or if at any time in such review period the Board of Review decides that it will not make a recommendation on an action, the action may take effect.

"(D) EFFECT OF RECOMMENDATION.—

"(i) RESPONSE.—An action with respect to which the Board of Review has made a recommendation in accordance with subparagraph (C) may only take effect if the board of directors adopts such recommendation or if the board of directors has evaluated and responded, in writing, to the Board of Review with respect to such recommendation and transmits such action, evaluation, and response to Congress in accordance with clause (ii) and the 60-calendar day period described in clause (ii) expires.

"(ii) NONADOPTION OF RECOMMENDATION.—If the board of directors does not

adopt a recommendation of the Board of Review regarding an action, the board of directors shall transmit to the Speaker of the House of Representatives and the President of the Senate a detailed description of the action, the recommendation of the Board of Review regarding the action, and the evaluation and response of the board of directors to such recommendation, and the action may not take effect until the expiration of 60 calendar days (excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day on which the board of directors makes such transmission to the Speaker of the House of Representatives and the President of the Senate.

"(E) LIMITATION ON EXPENDITURES.—Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airjorts Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.".

(3) CONFORMING AMENDMENT.—Section 6007 (f)(4) of such Act is further amended by striking "DISAPPROVAL PROCEDURE.—" and inserting "REVIEW PROCEDURE.—".

(e) CONGRESSIONAL DISAPPROVAL PROCEDURE.—Section 6007(f) of such Act is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (6),

(7), (8), and (9), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) CONGRESSIONAL DISAPPROVAL PROCEDURE.—

"(A) IN GENERAL.—This paragraph is enacted by Congress—

"(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this paragraph; and they supersede other rules only to the extent that they are inconsistent therewith; and

"(ii) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

"(B) RESOLUTION DEFINED.—For the purpose of this paragraph, the term 'resolution' means only a joint resolution, relating to an action of the board of directors transmitted to Congress in accordance with paragraph (4)(D)(ii), the matter after the resolving clause of which is as follows: "That the Congress disapproves of the action of the board of directors of the Metropolitan Washington Airports Authority described as follows: .', the blank space therein being appropriately filled. Such term does not include a resolution which specifies more than one action.

"(C) REFERRAL.—A resolution with respect to a board of director's action shall be referred to the Committee on Public Works and Transportation of the House of Representatives, or the Committee on Commerce, Science and Technology of the Senate, by the Speaker of the House of Representatives or the President of the Senate, as the case may be.

"(D) MOTION TO DISCHARGE.—If the committee to which a resolution has been referred has not reported it at the end of 20 calendar days after its introduction, it is in order to move to discharge the committee from further consideration of that joint resolution or any other resolution with respect to the board of directors action which has been referred to the committee.

"(E) RULES WITH RESPECT TO MOTION.—A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Motions to postpone shall be decided without debate.

"(F) EFFECT OF MOTION.—If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same acion.

"(G) SENATE PROCEDURE.—

"(i) MOTION TO PROCEED.—When the committee of the Senate has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) LIMITATION ON DEBATE.—Debate in the Senate on the resolution shall be limtied to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

"(iii) NO DEBATE ON CERTAIN MOTIONS. In the Senate, motions to postpone made with respect to the consideration of a resolution and motions to proceed to the consideration of other business shall be decided without debate.

"(iv) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution shall be decided without debate.

"(H) EFFECT OF ADOPTION OF RESOLUTION BY OTHER HOUSE.—If, before the passage by 1 House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

"(i) The joint resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it, except in the case of final passage as provided in clause (ii)(I).

"(ii) With respect to a joint resolution described in clause (i) of the House receiving the joint resolution—

"(I) the procedure in that House shall be the same as if no joint resolution had been received from the House; but

"(II) the vote on final passage shall be on the joint resolution of the other House.

Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution that originated in the receiving House.".

(f) CONFLICTS OF INTEREST; REMOVAL FOR CAUSE.—Section 6007(f) of such Act is further amended by adding at the end the following new paragraphs:

"(10) CONFLICTS OF INTEREST.—In every contract or agreement to be made or entered into, or accepted by or on behalf of the Airports Authority, there shall be inserted an express condition that no member of a Board of Review shall be admitted to

any share or part of such contract or agreement, or to any benefit to arise thereupon.

"(11) REMOVAL.—A member of the Board of Review shall be subject to removal only for cause by a two-thirds vote of the board of directors.".

(g) LIMITATION ON AUTHORITY.—Section 6007(h) of such Act is amended by inserting "thereafter" before "shall have no".

(h) REVIEW OF CONTRACTS.—Section 6007 of such Act is further amended by adding at the end the following new subsection:

"(i) REVIEW OF CONTRACTING PROCEDURES.—The Comptroller General shall review contracts of the Airports Authority to determine whether such contracts were awarded by procedures which follow sound Government contracting principles and are in compliance with section 6005(c)(4) of this title. The Comptroller General shall submit periodic reports of the conclusions reached as a result of such review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.".

Sec. 7003. Amendment of Lease.

The Secretary of Transportation may amend the lease entered into with the Metropolitan Washington Airports Authority under section 6005(a) of the Metropolitan Washington Airports Authority Act of 1986 to secure the Airports Authority's consent to the conditions relating to the new Board of Review to be established pursuant to the amendments made by this Act.

Sec. 7004. Termination of Existing Board of Review and Establishment of New Board of Review.

(a) TERMINATION OF EXISTING BOARD AND ESTABLISHMENT OF NEW BOARD.—Except as provided in sub-

section (b), the Board of Review of the Metropolitan Washington Airports Authority in existence on the day before the date of the enactment of this Act shall terminate on such date of enactment and the board of directors of such Airports Authority shall establish a new Board of Review in accordance with the Metropolitan Washington Airports Act of 1986, as amended by this Act.

(b) PROTECTION OF CERTAIN ACTIONS.—The provisions of section 6007(h) of the Metropolitan Washington Airports Act (49 U.S.C. App. 2456(h)) in effect on the day before the date of the enactment of this Act shall apply only to those actions specified in section 6007(f)(4)(B) of such Act that would have been submitted to the Board of Review of the Metropolitan Washington Airports Authority on or after June 17, 1991, the date on which the Board of Review of the Airports Authority was declared unable to carry out certain of its functions pursuant to judicial order. Actions taken by the Airports Authority and submitted to the Board of Review pursuant to section 6007(f)(4) of such Act prior to June 17, 1991, and not disapproved, shall remain in effect and shall not be set aside solely by reason of a judicial order invalidating certain functions of the Board of Review.

(c) LIMITATION ON AUTHORITY OF AIRPORTS AUTHORITY.—The Metropolitan Washington Airports Authority shall have no authority to perform any of the actions that are required by section 6007(f)(4) of the Metropolitan Washington Airports Act, as amended by this Act, to be submitted to the Board of Review after the date of the enactment of this Act until the board of directors of the Airports Authority establishes a new Board of Review in accordance with such Act and appoints the 9 members of the Board of Review.

SUBCHAPTER III—METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

§ 2451. Findings

The Congress finds that—

(1) the two, federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communities,

the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of a perceived limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

(Pub.L. 99-500, Title VI, § 6002, Oct. 18, 1986, 100 Stat. 1783-373; Pub.L. 99-591, Title VI, § 6002, Oct. 30, 1986, 100 Stat. 3341-376.)

§ 2452. Purpose

(a) In general

It is therefore declared to be the purpose of the Congress in this subchapter to authorize the transfer of operating responsibility under long-term lease of the two Metropolitan Washington Airport properties as a unit,

including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control, management, operation, and development of these important transportation assets.

(b) Inclusion of BWI not precluded

Nothing in this subchapter shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

(Pub.L. 99-500, Title VI, § 6003, Oct. 18, 1986, 100 Stat. 1783-374; Pub.L. 99-591, Title VI, § 6003, Oct. 30, 1986, 100 Stat. 3341-377.)

§ 2453. Definitions

In this subchapter—

(1) Administrator

The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) Airports Authority

The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 2456 of this title.

(3) Employees

The term "employees" means all permanent Federal Aviation Administration personnel employed on

the date the lease under section 2454 of this title takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) Metropolitan Washington Airports

The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) Secretary

The term "Secretary" means the Secretary of Transportation.

(6) Washington Dulles International Airport

The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport on or in the vicinity of the District of Columbia," approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) Washington National Airport

The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes," approved June 29, 1940 (54 Stat. 686).

(Pub.L. 99-500, Title VI, § 6004, Oct. 18, 1986, 100 Stat. 1783-374; Pub.L. 99-591, Title VI, § 6004, Oct. 30, 1986, 100 Stat. 3341-378.)

§ 2454. Lease of Metropolitan Washington Airports

(a) Authority to enter into lease

The Secretary is authorized to enter into a lease of the Metropolitan Washington Airports with the Airports Au-

thority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority. Authority to enter into a lease and agreement under this section shall lapse two years after October 18, 1986.

(b) Payments

(1) Lease payments

The lease shall provide for the Airports Authority to pay to the general fund of the Treasury annually an amount, computed using the GNP Price Deflator, to equal $3,000,000 in 1987 dollars. The Secretary and the Airports Authority may renegotiate the level of lease payments attributable to inflation costs every ten years.

(2) Retirement obligations

(A) Discontinued service

Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of Title 5 of employees who elect not to transfer to the Airports Authority.

(B) Unfunded liability

Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (i) the future cost of benefits payable from the Fund

and due the employees covered under section 2457(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 2457(e) of this tile. In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

(c) Minimum terms and conditions

The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) Operation of airports as a unit

The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unity and as primary airports serving the Metropolitan Washington area.

(2) Airport purposes

The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this subchapter is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport pur-

poses, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) AIP requirements

The Airports Authority shall be subject to the requirements of section [49 U.S.C.A. § 2210(a)] and the assurances and conditions required of grant recipients under such Act [49 U.S.C.A. § 2201 et seq.] as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act [49 U.S.C.A. § 2201(a)(12)], all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

(4) Contracts

In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Apthority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5) Continuation of regulations

(A) In general

Except as provided in subparagraph (B), all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) Exceptions

The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 139.39(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) Operations

The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on October 18, 1986 and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) Transfer of rights, liabilities, and obligations

(A) In general

Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secre-

tary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) Exceptions

The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(C) Payments into Employees' Compensation Fund

The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of Title 5 for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of Title 5 with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(D) Collective bargaining rights

The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) Audits

The Comptroller General of the United States may conduct periodic audits of the activites and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) Code of ethics

The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by its board of directors and employees.

(9) Restriction on use of certain revenues

Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amorti-

zation) at Washington Dulles International Airport.

(10) General aviation fees

The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Aiports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(11) Other terms

The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this subchapter.

(d) Submission to Congress

The Secretary shall submit the lease entered into under this section to Congress. The lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, whichever occurs later.

(e) Enforcement of lease provisions

The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

(Pub.L. 99-500, Title VI § 6005, Oct. 18, 1986, 100 Stat. 1783-375; Pub.L. 99-591, Title VI, § 6005, Oct. 30, 1986, 100 Stat. 3341-378.)

§ 2455. Capital improvements, construction, and rehabilitation

(a) Improvements

It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Washingotn National Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 2456 of this title for any such improvement, construction, or rehabilitation.

(b) Secretary's assistance

The Secretary shall assist the three airports serving the Washington, D.C. metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

(Pub.L. 99-500, Title VI, § 6006, Oct. 18, 1986, 100 Stat. 1783-378; Pub.L. 99-591, Title VI, § 6006, Oct. 30, 1986, 100 Stat. 3341-381.)

§ 2456. Airports Authority

(a) Powers conferred by Virginia and the District of Columbia

The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of

Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) Purpose

The Airports Authority shall be—

(1) independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the Federal Government; and

(2) a political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(c) General authorities

The Airports Authority shall be authorized—

(1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—

(A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or part from the proceeds of such bonds;

(3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) to levy fees or other charges; and

(5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on October 18, 1986.

(d) Conflict-of-interest provisions

The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirements of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 2454(c)(8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under which an exception may be granted.

(e) Board of directors

(1) Appointment

The Airports Authority shall be governed by a board of directors of 11 members, as follows:

(A) five members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governer of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) Restrictions

Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

(3) Terms

Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 4 years.

(4) Removal of Presidential appointees

A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) Required number of votes

Seven votes shall be required to approve bond issues and the annual budget.

(f) Board of Review

(1) Composition

The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review of the Airports Authority. The Board of Review shall be established by the board of directors to represent the interests of users of the Metropolitan Washington Airports and shall be composed of 9 members appointed by the board of directors as follows:

(A) 4 individuals from a list provided by the Speaker of the House of Representatives.

(B) 4 individuals from a list provided by the President pro tempore of the Senate.

(C) 1 individual chosen alternately from a list provided by the Speaker of the House of Representatives and from a list provided by the President pro tempore of the Senate.

In addition to the recommendations on a list provided under this paragraph, the board of directors may request additional recommendations.

(2) Terms, vacancies, and qualifications

(A) Terms

Members of the Board of Review appointed under paragraphs (1)(A) and (1)(B) shall be

appointed for terms of 6 years. Members of the Board of Review appointed under paragraph (1)(C) shall be appointed for terms of 2 years. A member may serve after the expiration of that member's term until a successor has taken office.

(B) Vacancies

A vacancy in the Board of Review shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term.

(C) Qualifications

Members of the Board of Review shall be individuals who have experience in aviation matters and in addressing the needs of airport users and who themselves are frequent users of the Metropolitan Washington Airports. A member of the Board of Review shall be a registered voter of a State other than Maryland, Virginia, or the District of Columbia.

(D) Effect of more than 4 vacancies

At any time that the Board of Review established under this subsection has more than 4 vacancies and lists have been provided for appointments to fill such vacancies, the Airports Authority shall have no authority to perform any of the actions that are required by paragraph (4) to be submitted to the Board of Review.

(3) Procedures

The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting and for the selection of a Chairman. The Board shall meet at least once each year and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

(4) Review procedure

(A) Submission required

An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to become effective.

(B) Actions affected

The following are the actions referred to in subparagraph (A):

(i) the adoption of an annual budget and any amendments thereto;

(ii) the authorization for the issuance of bonds and an annual plan for issuance of bonds and any amendments to such plan;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan;

(v) the appointment of the chief executive officer;

(vi) the award of a contract (other than a contract in connection with the issuance or sale of bonds which is executed within 30 days of the date of issuance of the bonds) which has been approved by the board of directors of the Airports Authority;

(vii) any action of the board of directors approving a terminal design or airport layout or modification of such design or layout; and

(viii) the authorization for the acquisition or disposal of land and the grant of a long-term easement.

(C) Recommendations

The Board of Review may make to the board of directors recommendations regarding an action within either (i) 30 calendar days of its submission under this paragraph; or (ii) 10 calendar days (excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) of its submission under this paragraph; whichever period is longer. Such recommendations may include a recommendation that the action not take effect. If the Board of Review does not make a recommendation in the applicable review period under this subparagraph or if at any time in such review period the Board of Review decides that it will not make a recommendation on an action, the action may take effect.

(D) Effect of recommendation

(i) Response

An action with respect to which the Board of Review has made a recommendation in accordance with subparagraph (C) may only take effect if the board of directors adopts such recommendation or if the board of directors has evaluated and responded, in writing, to the Board of Review with respect to such recommendation and transmits such action, evaluation, and response to Congress in accordance with clause (ii) and the 60-calendar day period described in clause (ii) expires.

(ii) Nonadoption of recommendation

If the board of directors does not adopt a recommendation of the Board of Review regarding an action, the board of directors shall transmit to the Speaker of the House of Representatives and the President of the Senate a detailed description of the action, the recommendation of the Board of Review regarding the action, and the evaluation and response of the board of directors to such recommendation, and the action may not take effect until the expiration of 60 calendar days (excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day on which the board of directors makes such transmission to the Speaker of the House of Representatives and the President of the Senate.

(E) Limitation on expenditures

Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) Congressional disapproval procedure

(A) In general

This paragraph is enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this paragraph; and they supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(B) Resolution defined

For the purpose of this paragraph, the term "resolution" means only a joint resolution, relating to an action of the board of directors transmitted to Congress in accordance with

paragraph (4)(D)(ii), the matter after the resolving clause of which is as follows: "That the Congress disapproves of the action of the board of directors of the Metropolitan Washington Airports Authority described as follows: ——", the blank space therein being appropriately filled. Such term does not include a resolution which specifies more than one action.

(C) Referral

A resolution with respect to a board of director's action shall be referred to the Committee on Publics Works and Transportation of the House of Representatives, or the Committee on Commerce, Science and Technology of the Senate, by the Speaker of the House of Representatives or the President of the Senate, as the case may be.

(D) Motion to discharge

If the committee to which a resolution has been referred has not reported it at the end of 20 calendar days after its introduction, it is in order to move to discharge the committee from further consideration of that joint resolution or any other resolution with respect to the board of directors action which has been referred to the committee.

(E) Rules with respect to motion

A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment

to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Motions to postpone shall be decided without debate.

(F) Effect of motion

If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(G) Senate procedure

(i) Motion to proceed

When the committee of the Senate has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Limitation on debate

Debate in the Senate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to

move to reconsider the vote by which the resolution is agreed to or disagreed to.

(iii) No debate on certain motions

In the Senate, motions to postpone made with respect to the consideration of a resolution and motions to proceed to the consideration of other business shall be decided without debate.

(iv) Appeals

Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution shall be decided without debate.

(H) Effect of adoption of resolution by other house

If, before the passage by 1 House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it, except in the case of final passage as provided in clause (ii)(I).

(ii) With respect to a joint resolution described in clause (i) of the House receiving the joint resolution—

(I) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(II) the vote on final passage shall be on the joint resolution of the other House.

Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution that originated in the receiving House.

(6) Request for consideration of other matters

The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(7) Participation in meetings of Airports Authority

Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(8) Staff

The Board of Review may hire two staff persons to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

(9) Liability

A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(10) Conflicts of interest

In every contract or agreement to be made or entered into, or accepted by or on behalf of the Airports Authority, there shall be inserted an express condition that no member of a Board of Review shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon.

(11) Removal

A member of the Board of Review shall be subject to removal only for cause by a two-thirds vote of the board of directors.

(g) Certain actions to be taken by regulation

Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) Limitation on authority

If the Board of Review established under subsection (f) of this section is unable to carry out its functions under this subchapter by reason of a judicial order, the Arports Authority thereafter shall have no authority to perform any of the actions that are required by paragraph [1] (f)(4) of this section to be submitted to the Board of Review.

(i) Review of contracting procedures

The Comptroller General shall review contracts of the Airports Authority to determine whether such contracts were awarded by procedures which follow sound Government contracting principles and are in compliance with section 2454(c)(4) of this title. The Comptroller General shall submit periodic reports of the conclusions reached as a result of such review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(Pub.L. 99-500, Title VI, § 6007, Oct. 18, 1986, 100 Stat. 1783-379; Pub.L. 99-591, Title VI, § 6007, Oct. 30, 1986, 100 Stat. 3341-382; Pub.L. 102-240, Title VII, § 7002, Dec. 18, 1991, 105 Stat. 2197.)

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[1] So in original. Probably should be "subsection".

§ 2457. Federal employees at Metropolitan Washington Airports

(a) Employee protection

Not later than the date the lease under section 2454 of this title takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests of employees during the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 2454 of this title takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to transferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three health insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date

the lease takes effect which are reasonably comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

(b) Labor agreements

(1) Adoption

The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 2454 of this title takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of Title 5.

(2) Continuation

The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) Rights of terminated employees

Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 2454 of this title takes effect shall be entitled, as a condition of any lease entered into in accordance with section 2454 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employees would have had under Federal law if termination had occurred immediately before such date.

(d) Annual and sick leave

Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of Title 5, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 6005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of Title 5.

(e) Civil Service retirement

Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 2454 of this title takes effect is subject to subchapter III of chapter 83 of Title 5 or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States Government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) Separated employees

An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

(g) Access to records

The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under section 2454 of this title takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

(Pub.L. 99-500, Title VI, § 6008, Oct. 18, 1986, 100 Stat. 1783-382; Pub.L. 99-591, Title VI, § 6008, Oct. 30, 1986, 100 Stat. 3341-385.)

§ 2458. Relationship to and effect of other laws

(a) Other laws

In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to Federal law as any other airport except as otherwise provided in this subchapter, during the period that the lease authorized by section 2454 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); [49 U.S.C.A. § 2201 et seq.]; and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other

purposes", approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) Inapplicability of certain laws

The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of the fee simple title to such airports or by reason of the authority of the Board of Review under subsection 2456(f) of this title.

(c) Police power

The Comomnwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d) Planning

(1) In general

The authority of the National Capital Planning Commission under section 71d of Title 40 shall not apply to the Airports Authority.

(2) Consultation

The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development

that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e) Operation limitations

(1) High Density Rule

The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on October 18, 1986 and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) Annual passenger limitations

The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on October 18, 1986.

(Pub.L. 99-500, Title VI, § 6009, Oct. 18, 1986, 100 Stat. 1783-384; Pub.L. 99-591, Title VI, § 6009, Oct. 30, 1986, 100 Stat. 3341-387.)

§ 2459. Authority to negotiate extension of lease

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 2454(a) of this title.

(Pub.L. 99-500, Tile VI, § 6010, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6010, Oct. 30, 1986, 100 Stat. 3341-388.)

§ 2460. Separability

Except as provided in section 2456(h) of this title, if any provision of this subchapter or the application thereof to any person or circumstance, is held invalid, the re-

mainder of this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub.L. 99-500, Title VI, § 6011, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6011, Oct. 30, 1986, 100 Stat. 3341-388.)

§ 2461. Nonstop flights

Perimeter rule

An air carrier may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,250 statute miles away from Washington National Airport.

(Pub.L. 99-500, Title VI, § 6012, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6012, Oct. 30, 1986, 100 Stat. 3341-388.)

1985 SESSION

VIRGINIA ACTS OF ASSEMBLY—CHAPTER 598

An Act to create a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government.

[S 711]

Approved Apr. 03, 1985

Be it enacted by the General Assembly of Virginia:

1. § 1. Definitions.—For the purposes of this act the following terms and phrases shall have the following meanings:

"Authority Facilities" shall mean any or all airport facilities now existing or hereafter acquired or constructed or caused to be constructed by the Authority under this act, and together with any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, air rights, franchises, machinery equipment, furnishings, landscaping, easements, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, including the existing Dulles Airport Access Road and its right-of-way, acquired or constructed by the Authority;

"Authority" shall mean the Metropolitan Washington Airports Authority hereinafter created or, if the Authority shall be abolished, the board, body, or commission or agency succeeding to the principal functions thereof or upon whom the powers given by this act to the Authority shall be conferred by law;

"Cost" shall mean, as applied to Authority Facilities, the cost of acquisiton of all lands, structures, rights-of-way, franchises, easements and other property rights and interests, the cost of lease payments, the cost of construction, the cost of demolishing, removing or relocating any

buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of any extensions, enlargements, additions and improvements, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructng the Authority Facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, the cost of bond insurance and other devices designed to enhance the cerditworthiness of the bonds, and such other expenses as may be necessary or incidential to the construction of the Authority Facilities, the financing of such construction and the placing of the Authority Facilities in operation. Any obligation or expenses incurred by the Commonwealth of any agency thereof, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the Authority Faciilties may be regarded as part of the cost of the Authority Facilities and may be reimbursed to the Commonwealth or such agency out of any funds available therefor or the proceeds of the revenue bonds issued for such Authority Facilities as hereinafter authorized.

"Bonds" or "revenue bonds" shall mean bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under the provisions of this act.

§ 2. Metropolitan Washington Airports Authority created.—There is hereby created the Metropolitan Washington Airports Authority, hereafter referred to as the Au-

thority, a public body corporate and politic and independent of all other bodies, having the powers and jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon it by the legislative authorities of both the Commonwealth of Virginia and the District of Columbia.

§ 3. Metropolitan Washington Airports Authority.—The Metropolitan Washington Airports Authority created by this act is hereby authorized, when similarly authorized by the District of Columbia, to acquire from the United States of America, by lease or otherwise, the two airports known as Washington National Airport and Washington Dulles International Airport and all related properties now administered by Metropolitan Washington Airports, an agency of the Federal Aviation Administration of the United States Department of Transportation, but only with the approval of the Governor of Virginia. Subject to such gubernatorial approval, general consent is hereby given to conditions imposed by the Congress of the United States on such acquisitions that are not inconsistent with this act.

§ 4. Membership; terms; officers.—A. The Authority shall consist of eleven members: five appointed by the Governor of the Commonwealth of Virginia, three appointed by the Mayor of the District of Columbia, two appointed by the Governor of the State of Maryland, and one appointed by the President of the United States. Members representing the Commonwealth of Virginia shall be subject to confirmation by the Virginia General Assembly. For the purposes of doing business, six members shall constitute a quorum. The failure of a single appointing official to appoint one or more members, as herein provided, shall not impair the Authority's creation when the other conditions thereof have been met.

B. Members shall (i) not hold elective or appointive public office, (ii) serve without compensation, and (iii) reside within the Washington Standard Metropolitan

Statistical Area, except that the member appointed by the President of the United States shall not be required to reside in that area. The members of the Authority shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties.

C. Appointments to the Authority shall be for a period of six years. However, initial appointments shall be made as follows: each jurisdiction shall appoint one member for a full six-year term, a second member for a four-year term and in the case of the Commonwealh and the District of Columbia, a third member for a two-year term. The Governor of Virginia shall make the final two Virginia initial appointments for one two-year and one four-year term. The President shall make initial and subequent appointments for six-year terms.

D. Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

E. Each member may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which he is appointed.

F. The Authority shall annually elect one of its members as chairman and another as vice-chairman and shall also elect annually a secretary and a treasurer, or a secretary-treasurer, who may or may not be members of the Authority, and prescribe their powers and duties. The Authority may also appoint from its staff an assistant secretary and an assistant treasurer, or an assistant secretary-treasurer, who shall, in addition to other duties, discharge such functions of the secretary and the treasurer.

G. The members of the Authority shall continue to serve until their successors shall be duly appointed. Any person appointed to fill a vacancy shall serve for the un-

expired term. Any member of the Authority shall be eligible for reappointment for one term.

H. The members of the Authority shall not be personally liable for any act done or action taken in their capacities as members of the Authority, nor shall they be personally liable for any bond, note or other evidence of indebtedness issued by the Authority.

§ 5. Powers and duties of the Authority.—For the purpose of acquiring, operating, maintaining, developing, promoting and protecting Washington National Airport and Washington Dulles International Airport together as primary airports for public purposes serving the metropolitan Washington area, the Authority shall have all necessary or convenient powers including, but not limited to, the power:

1. To adopt and amend by-laws for the regulation of its affairs and the conduct of its business;

2. To plan, establish, operate, develop, construct, enlarge, maintain, equip, operate and protect the airports;

3. To adopt and amend regulations to carry out the powers granted by this section;

4. To adopt an official seal and alter the same at its pleasure;

5. To appoint one or more advisory committees;

6. To issue revenue bonds of the Authority for any of its purposes, payable solely from the fees and revenues pledged for their payment, and to refund its bonds, all as provided in this act;

7. To borrow money on a short-term basis and issue from time to time its notes therefor payable on such terms, conditions or provisions as it may deem advisable;

8. To fix, revise, charge, and collect rates, fees, rentals and other charges for the use of the airports;

9. To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

10. To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary, and to fix their compensation and benefits. However, the Authority shall comply with any Act of Congress concerning former employees of the Federal Aviation Administration and Metropolitan Washington Airports;

11. To sue and be sued in its own name, plead and be impleaded;

12. To construct or permit the construction of commercial and other facilities upon the airport property on terms established by the Authority and consistent with the purposes of this act;

13. To make and enter into all contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the travelling public and airport users, and such contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service, avoid duplication of services, or conserve airport property and the airport environment;

14. To apply for, receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual; and

15. To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

§ 6. Authority rules and regulations.—The Authority shall have the power to adopt, amend, and repeal rules and regulations pertaining to the use, maintenance and

operation of its facilities and governing the conduct of persons and organizations using its facilities.

Unless the Authority shall by unanimous vote of all members present determine that an emergency exists, the Authority shall, prior to the adoption of any rule or regulation or alteration, amendment or modification thereof:

a. Make such rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least ten days;

b. Publish a notice in a newspaper or newspapers of general circulation in the political subdivision where the Authority's Facilities are located declaring the Authority's intention to consider adopting such rule, regulation, alteration, amendment, or modification and informing the public that the Authority will hold a public hearing at which any person may appear and be heard for or against the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the day of the publication thereof; and

c. Hold the public hearing on the day and at the time specified in such notice or any adjournment thereof, and hear persons appearing for or against such rule, regulation, alteration, amendment or modification.

The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

The Authority's rules and regulations relating to:

a. Air operations and motor vehicle traffic, including but not limited to, motor vehicle speed limits and the location of and payment for public parking;

b. Access to and use of Authority Facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

c. Aircraft operation and maintenance;

shall have the force and effect of law, as shall any other rule or regulation of the Authority which shall contain a determination by the Authority that it is necessary to accord the same force and effect of law in the public interest; provided, however, that with respect to motor vehicle traffic rudes and regulations, the Authority shall obtain the approval of the traffic engineer or comparable official of the political subdivision in which such rules or regulations are to be enforced. The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the political subdivision in which such violation occurred; all other violations of the Authority's rules and regulations having the force and effect of law shall be punishable as misdemeanors.

§ 7. Police powers.—The Authority's employees meeting the minimum requirements of the Criminal Justice Officers Training Standards Commission may be given special police power by any of the circuit courts of the political subdivisions in which the Authority's Facilities are located. The authority conferred upon such special policemen shall be exercised only upon the Authority's Facilities and shall be in all terms consistent with the requirements of Chapter 3 of Title 15.1 of the Code of Virginia.

Such special policemen shall have all powers vested in police officers under Chapter 3 of Title 15.1 of the Code of Virginia and shall be responsible upon the Authority's Facilities for enforcing the Authority's rules and regulations and all other applicable statutes, ordinances, rules, and regulations of this Commonwealth and political subdivisions, agencies, and instrumentalities thereof.

Such special policemen may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any court of competent jurisdiction any person violating any rule or reguation.

For the purpose of enforcing such statutes, ordinances, rules and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the political subdivision wherein the offense was committed shall have jurisdiction to try a person charged with the violation of any such statutes, ordinances, rules and regulations.

§ 8. Operation of foreign trade zone.—The Authority is authorized and empowered to establish, operate and maintain a foreign trade zone and otherwise to expedite and encourage foreign commerce.

§ 9. Acquisition of property; eminent domain.—A. The Authority is hereby authorized to acquire by purchase, lease or grant such additional lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for construction and operation of the airports, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

B. Any political subdivision of the Commonwealth, all or a part of which is located within sixty miles of Authority Facilities is authorized to provide services, to donate real or personal property and to make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority Facilities. Any such political subdivision is hereby authorized to issue its bonds in the manner provided in the Public Finance Act or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Authority. The Authority may agree to assume, or reimburse such a political subdivision for any indebtedness

incurred by such political subdivision with respect to facilities conveyed by it to the Authority. With the consent of the governing body of the political subdivision any such agreement may be made subordinate to the Authority's indebtedness to others.

C. The Authority established hereunder is hereby granted full power to exercise the right of eminent domain in the acquisition of any lands, easements, privileges or other property interests which are necessary for airport and landing field purposes, including the right to acquire, by eminent domain, aviation easements over lands or water outside the boundaries of its airports or landing fields where necessary in the interests of safety for aircraft to provide unobstructed air space for the landing and taking off of aircraft utilizing its airports and landing fields even though such aviation easement be inconsistent with the continued use of such land, or inconsistent with the maintenance, preservation and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of such acquisition. Proceedings for the acquisition of such lands, easements and privileges by condemnation may be instituted and conducted in the name of the Authority in accordance with Title 25 of the Code of Virginia.

§ 10. Revenue bonds.—The Authority is hereby authorized to provide resolution for the issuance, at one time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority Facilities, including the refunding of federal appropriations not reimbursed to the United States Treasury by the Metropolitan Washington Airports. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be subject to redemption or repur-

chase before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the Authority or as determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth of Virginia. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any other provision of this act or any recitals in any bonds issued under the provisions of this section, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth of Virginia. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or negotiated sale, and for such price, as it may determine will best effect the purposes of this section.

The proceeds of the bonds shall be used solely for the payment of the cost of Authority Facilities, including im-

provements, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become multilated or shall be destroyed or lost. Bonds may be issued under the provisions of this section without obtaining the consent of any agency of the Commonwealth of Virginia, and without any other proceedings, conditions or things not specifically required by this section.

§ 11. Refunding bonds.—The Authority is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and if deemed advisable by the Authority, for either or both of the following additional purposes: con-

structing improvements, extensions or enlargement of the Authority Facilities in connection with which the bonds to be refunded shall have been issued, and paying all or any part of the cost of any additional Authority Facilities. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect to the same, shall be governed by the provisions of this act insofar as the same may be applicable. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this act and, if sold, the proceeds thereof may be applied to the purchases, redemption or payment of such outstanding bonds.

§ 12. Pledge of funds.—All moneys received pursuant to the provisions of this act, whether as proceeds from the sale of bonds, as revenues, or as grants, appropriations or other funds provided by federal, state or local governments, may be pledged to the payment of bonds issued by the Authority, if so pledged, shall be deemed to be trust funds to be held and applied solely as provided in this act.

§ 13. Marketability of bonds.—The Authority is authorized and empowered to exercise all or any part or combination of the powers herein granted, to make covenants other than and in addition to the covenants herein expressly authorized, of like, or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the Authority, as will tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein.

§ 14. Bonds as legal investments and security for public deposits.—Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth

and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

§ 15. Credit of Commonwealth and political subdivisions not pledged.—Revenue bonds issued under the provisions of this act shall not constitute a debt of the Commonwealth of Virginia or of any other political subdivision thereof nor a pledge of the faith and credit of the Commonwealth or of any political subdivision thereof. Such bonds shall be payable solely from funds provided therefor from revenues. The issuance of revenue bonds under the provisions of this act shall not directly, indirectly, or contingently obligate the Commonwealth or any political subdivision thereof to the payment thereof or to the levy or pledge of any form of taxation whatever therefor. All such revenue bonds shall contain a statement on their face substantially to this effect.

§ 16. Trust agreement.—In the discretion of the Authority any bonds issued under the provisions of this act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the Commonwealth of Virginia. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the fees and other revenues to be received, but shall not convey or mortgage the airports or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and

enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisiton of property and the construction, improvement, maintenance, repair, operation and insurance of the airports, the rates or fees or other charges to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth of Virginia which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the airports.

§ 17. Revenues.—The Authority is hereby authorized to fix, revise, charge and collect fees or other charges for the use of the airports and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the airports for placing thereon telephone, telegraph, electric light or power lines, and to fix the terms, conditions, rents and fees or other charges for such use. Such fees or other charges shall be so fixed and adjusted in respect of the aggregate of fees or other charges from the airports as to provide a fund sufficient with other revenues, if any, (i) to pay the cost of maintaining, repairing and operating the airports, (ii) to pay the principal of and interest on such bonds as the same shall become due and payable, and (iii) to create reserves for such purposes. The fees and other charges and all other revenues derived from the airports, except such part thereof as may be

necessary to pay such cost of maintenance, repair and operation and provide such reserves as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees and other charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

§ 18. Trust funds.—All proceeds from the sale of bonds and revenues derived therefrom received pursuant to the provisions of this act shall be deemed to be trust funds to be held and applied solely as provided in this act. The Authority may, in the resolution authorizing the bonds or in the trust agreement securing such bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues of the Authority to a trustee,

which may be any trust company or bank having the powers of a trust company within or without the Commonwealth of Virginia, which shall act as trustee of the funds and hold and apply the same to the purposes of this act, subject to such regulations as this act and such resolution or trust agreement may provide. The trustee may invest and reinvest such funds in such securities as may be provided in the resolution authorizing the bonds or in the trust agreement securing such bonds.

§ 19. Annual audit.—The Authority shall keep suitable records of all its financial transactions and shal have the same audited annually. Copies of such audit shall be furnished to the Governor of the Commonwealth of Virginia and to the Mayor of the District of Columbia and shall be open to public inspection.

§ 20. Remedies.—Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given, may be restricted by such trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth of Virginia, or granted by this act or under such trust agreement or the resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by this act or by such agreement or resolution to be performed by the Authority or by any officer or agent thereof including the fixing, charging and collection of fees or other charges.

§ 21. Exemption from taxation.—The exercise of the powers granted by this act shall be in all respects for the benefit of the inhabitants of the Commonwealth of Virginia, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity, and as the operation and maintenance of the airports by the Authority will constitute the perform-

ance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the airports or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom; and the bonds issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth of Virginia and by any municipality, county or other political subdivision thereof.

§ 22. Jurisdiction of courts; liability for contracts and torts.—A. The courts of the Commonwealth of Virginia shall have original jurisdiction of all actions brought by or against the Authority, which courts shall in all cases apply the law of the Commonwealth of Virginia.

B. The Authority shall be liable for its contracts and for its torts and those of its members, officers, employees, and agents committed in the conduct of any proprietary function, in accordance with the law of the Commonwealth of Virginia but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing in this act shall be construed as a waiver by the Commonwealth of Virginia or the District of Columbia or of their political subdivisions of any immunity from suit.

C. The Authority shall be responsible for all executory contracts entered into by the United States with respect to the former Metropolitan Washington Airports before the date of acquisition of those airports, except that the procedure for disputes resolution contained in any such contract shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract.

D. The Authority shall not be responsible for any tort claims arising before the date of transfer.

§ 23. Procurement Act exemption.—In light of the multi-jurisdictional nature of the Authority, an exemption is hereby provided to the Authority from the provisions of the Virginia Public Procurement Act.

§ 24. Act liberally construed.—This act, being necessary for the welfare of the Commonwealth of Virginia and its inhabitants, shall be liberally construed to effect the purposes thereof.

§ 25. Constitutional construction.—The provisions of this act are severable and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein.

§ 26. Inconsistent laws applicable.—All other general or special laws inconsistent with any provision of this act are hereby declared to be inapplicable to the provisions of this act.

§ 27. Effective date.—This act shall only become effective upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to an Airport Authority created by the legislatures of the Commonwealth of Virginia and the District of Columbia pursuant to an agreement or compact that is consistent with the provisions of this act: provided, however, the Governor may make appointments for initial Authority membership at such time or times following the passage of this act as he may deem appropriate.

1987 SESSION

VIRGINIA ACTS OF ASSEMBLY—CHAPTER 665

An Act to amend and reenact §§ 1, 4, 5, 6, 7 and 27 of Chapter 598 of the 1958 Acts of Assembly which created a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government, relating to definitions; powers, duties, rules, regulations and police powers of the authority; and the effective date of the chapter; penalty.

[S 672]

Approved Apr. 8, 1987

Be it enacted by the General Assembly of Virginia:

1. That §§ 1, 4, 5, 6, 7 and 27 of Chapter 598 of the 1985 Acts of Assembly are amended and reenacted as follows:

§ 1. Definitions.—For the purposes of this act the following terms and phrases shall have the following meanings:

"Authority Facilities" shall mean any or all airport facilities now existing or hereafter acquired or constructed or caused to be constructed by the Authority under this act, and together with any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, air rights, franchises, machinery, equipment, furnishings, landscaping, easements, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, including the existing Dulles Airport Access Road and its right-of-way, acquired or constructed by the Authority;

"Authority" shall mean the Metropolitan Washington Airports Authority [hereinafter][*] created *by this act*

[*] Bracketed material struck through on original.

and by similar enactment by the District of Columbia or, if the Authority shall be abolished, the board, body, or commission or agency succeeding to the principal functions thereof or upon whom the powers given by this act to the Authority shall be conferred by law;

"Cost" shall mean, as applied to Authority Facilities, the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests, the cost of lease payments, the cost of construction, the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of any extensions, enlargements, additions and improvements, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Authority Facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, the cost of bond insurance and other devices designed to enhance the creditworthiness of the bonds, and such other expenses as may be necessary or incidental to the construction of the Authority Facilities, the financing of such construction and the placing of the Authority Facilities in operation. Any obligation or expenses incurred by the Commonwealth or any agency thereof, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the Authority Facilities may be regarded as part of the cost of the Authority Facilities

and may be reimbursed to the Commonwealth or such agency out of any funds available therefor or the proceeds of the revenue bonds issued for such Authority Facilities as hereinafter authorized.

"Bonds" or "revenue bonds" shall mean bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under the provisions of this act.

§ 4. Membership; terms; officers.—A. The Authority shall consist of eleven members: five appointed by the Governor of the Commonwealth of Virginia, three appointed by the Mayor of the District of Columbia, two appointed by the Governor of the State of Maryland, and one appointed by the President of the United States. Members representing the Commonwealth of Virginia shall be subject to confirmation by the Virginia General Assembly. For the purposes of doing business, six members shall constitute a quorum. The failure of a single appointing official to appoint one or more members, as herein provided, shall not impair the Authority's creation when the other conditions thereof have been met.

B. Members shall (i) not hold elective or appointive public office, (ii) serve without compensation, and (iii) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President of the United States shall not be required to reside in that area. The members of the Authority shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties.

C. Appointments to the Authority shall be for a period of six years. However, initial appointments shall be made as follows: each jurisdiction shall appoint one member for a full six-year term, a second member for a four-year term and in the case of the Commonwealth and the District of Columbia, a third member for a two-year

term. The Governor of Virginia shall make the final two Virginia initial appointments for one two-year and one four-year term. The President shall make initial and subsequent appointments for six-year terms.

D. Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

E. Each member may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which he is appointed.

F. The Authority shall annually elect one of its members as chairman and another as vice-chairman and shall also elect annually a secretary and a treasurer, or a secretary-treasurer, who may or may not be member of the Authority, and prescribe their powers and duties. The Authority may also appoint from its staff an assistant secretary and an assistant treasurer, or an assistant secretary-treasurer, who shall, in addition to their duties, discharge such functions of the secretary and the treasurer.

G. The members of the Authority shall continue to serve until their successors shall be duly appointed. Any person appointed to fill a vacancy shall serve for the unexpired term. Any member of the Authority shall be eligible for reappointment for one term.

H. The members of the Authority, *including any nonvoting members,* shall not be personally liable for any act done or action taken in their capacities as members of the Authority, *or its board of review,* nor shall they be personally liable for any bond, note or other evidence of indebtedness issued by the Authority.

§ 5. Powers and duties of the Authority.—*A*. For the purpose of acquiring, operating, maintaining, developing, promoting and protecting Washington National Airport and Washington Dulles International Airport together as primary airports for public purposes serving the metro-

politan Washington area, the Authority shall have all necessary or convenient powers including, but not limited to, the power:

1. To adopt and amend bylaws for the regulation of its affairs and the conduct of its business;

2. To plan, establish, operate, develop, construct, enlarge, maintain, equip, [operate] and protect the airports;

3. To adopt and amend regulations to carry out the power granted by this section;

4. To adopt an official seal and alter the same at its pleasure;

5. To appoint one or more advisory committees *and to establish a board of review*;

6. To issue revenue bonds of the Authority for any of its purposes, payable solely from the fees and revenues pledged for their payment, and to refund its bonds, all as provided in this act;

7. To borrow money on a short-term basis and issue from time to time its notes therefor payable on such terms, conditions or provisions as it may deem advisable;

8. To fix, revise, charge, and collect rates, fees, rentals and other charges for the use of the airports;

9. To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

10. To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary, and to fix their compensation and benefits. [However, the] *Employees of the Authority shall not participate in any strike or assert any right to strike against the Authority, and any employment agreement entered into by the Authority shall contain an ex-*

plicit prohibition against strikes by the employee or employees covered by such agreement. The Authority shall comply with any Act of Congress concerning former employees of the Federal Aviation Administration and Metropolitan Washington Airports;

11. To sue and be sued in its own name, plead and be impleaded;

12. To construct or permit the construction of commercial and other facilities *consistent with the purposes of this act* upon the airport property on terms established by the authority [and consistent with the purposes of this act];

13. To make and enter into all contracts and agreements necessary to desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the travelling public and airport users, *including contracts for normal governmental services on a reimbursable basis with local political subdivisions where the Authority Facilities are situated and with the District of Columbia government;* and *any* such contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service, avoid duplication of services, or conserve airport property and the airport environment;

14. To apply for, receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual; [and]

15. To make payments to reimburse the local political subdivisions where the Authority Facilities are situated for extraordinary law enforcement costs incurred by such localities; and

[15.] *16.* To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

B. Pursuant to Section 6007 (b) of the Metropolitan Washington Airports Act of 1986, the Authority is established solely to operate and improve both metropolitan Washington airports as primary airports serving the metropolitan Washington area and shall be independent of the Commonwealth and its local political subdivisions, the District of Columbia and the federal government in the performance and exercise of the airport-related duties and powers enumerated in subdivisions 1 through 16 of subsection A of this section. Any conflict between the exercise of these enumerated powers by the Authority and the powers of any local political subdivision within which Authority Facilities are situated shall be resolved in favor of the Authority.

§ 6. Authority rules and regulations.—*A.* The Authority shall have the power to adopt, amend, and repeal rules and regulations pertaining to the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

B. Unless the Authority shall be unanimous vote of all members present determine that an emergency exists, the Authority shall, prior to the adoption of any rule or regulation or alteration, amendment or modification thereof:

[a.] *1.* Make such rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least ten days;

[b.] *2.* Publish a notice in a newspaper or newspapers of general circulation *in the District of Columbia and* in the *local* political [subdivision] *subdivisions of the Commonwealth* where the [Authority's] *Authority* Facilities are located declaring the Authority's intention to consider adopting such rule, regulation, alteration, amendment, or modification and informing the public that the Authority will hold a public hearing at which any person

may appear and be heard for or against the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the day of the publication thereof; and

[c.] *3.* Hold the public hearing on the day and at the time specified in such notice or any adjournment thereof, and hear persons appearing for or against such rule, regulation, alteration, amendment or modification.

C. The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

D. The Authority's rules and regulations relating to:

[a.] *(i)* Air operations and motor vehicle traffic, including but not limited to, motor vehicle speed limits and the location of and payment for public parking;

[b.] *(ii)* Access to and use of Authority Facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

[c.] *(iii)* Aircraft operation and maintenance;

shall have the force and effect of law, as shall any other rule or regulation of the Authority which shall contain a determination by the Authority that it is necessary to accord the same force and effect of law in the public interest; provided, however, that with respect to motor vehicle traffic rules and regulations, the Authority shall obtain the approval of the traffic engineer or comparable official of the *local* political subdivision in which such rules or regulations are to be enforced. [The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the political subdivision in which such violation occurred; all other violations of the Authority's rules and regulations having the force and effect of law shall be punishable as misdemeanors.]

E. The violation of any rule or regulation of the Authority establishing a noise limitation on aircraft that operate at the Authority Facility shall subject the violator, in the discretion of the circuit court of any political subdvision where the facility is located to a civil penalty not to exceed $2,500 for each violation. Such penalty shall be paid to the Authority. With the consent of the violator or the accused violator of a rule establishing aircraft noise limits, the Authority may provide, in an order issued against the violator or accused violator, for the payment of civil charges in specific sums not to exceed the limit that could be imposed by the court. Such civil charge when paid shall be in lieu of any civil penalty which could be imposed by the court. Any court proceeding shall be within the exclusive jurisdiction of the circuit court and shall be a civil proceeding at law brought by the Authority.

F. The violation of any Authority rule or regulation, having the force and effect of law, shall be a Class 1 misdemeanor unless otherwise specified by this chapter or unless a lesser penalty is set by the Authority in the rule or regulation. The rules of criminal procedure and evidence that apply throughout the Commonwealth shall apply to the adjudication of any case involving the violation of any Authority rule or regulation having the force and effect of law.

G. The courts of this Commonwealth shall take judicial notice of the Authority's regularly adopted rules and regulations. For the convenience of the courts which may regularly hear cases arising under the Authority's rules and regulations, the Authority may certify to the clerk of such court a copy of its rules and regulations. Any such certification, when signed by the chairman of the Metropolitan Washington Airports Authority, shall be accepted as evidence of the facts therein stated.

H. With respect to the violation of any statute of the Commonwealth, local ordinance or Authority rules or reg-

ulation having the force and effect of law occurring at the Authority Facilities:

1. The matter shall be within the jurisdiction of the state courts of the political subdivision where the violation occurred; violations occurring at Washington National Airport shall be within the jurisdiction of the courts for Arlington County;

2. The attorney for the Commonwealth shall have authority to prosecute those offenses in the name of the Commonwealth or local government as appropriate; and the county or city attorney, if otherwise authorized to prosecute offenses in the name of the county or city, shall have authority to prosecute those offenses in the name of the county or city; and

3. Sheriffs and clerks of the court shall provide those same services and exercise those same powers with respect to Authority Facilities within their jurisdiction as for their political subdvisions.

§ 7. Police.—[The Authority's employees meeting the minimum requirements of the Criminal Justice Officers Training Standards Commission may be given special police power by any of the circuit courts of the political subdivisions in which the Authority's Facilities are located. The authority conferred upon such special policemen shall be exercised only upon the Authority's Facilities and shall be in all terms consistent with the requirements of Chapter 3 of Title 15.1 of the Code of Virginia.]. *A. The Commonwealth hereby grants, accepts and agrees to concurrent police power authority over the Metropolitan Washington Airports as provided in Section 6009 (c) of the Metropolitan Washington Airports Act of 1986.*

B. The Authority is authorized to establish and maintain a regular police force and to confer police powers to be exercised with respect to offenses occurring on the Authority Facilities upon its employees meeting the min-

imum requirements of the Department of Criminal Justice Services.

Such [special policemen] *police offictrs* shall have all powers vested in police officers under Chapter 3 of Title 15.1, *Chapter 11 of Title 16.1, Title 18.2 and Title 46.1* of the Code of Virginia and shall be responsible upon the [Authority's] *Authority* Facilities *and within 300 yards of the Facilities* for enforcing *the laws of the Commonwealth,* the Authority's rules and regulations and all other applicable [statutes,] ordinances, rules, and regulations [of this Commonwealth and political subdivisions, agencies, and instrumentalities thereof].

Such [special policemen] *police officers* may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any [court] *judicial officer* of competent jurisdiction any person violating, *upon Authority Facilities,* any rule or regulation *of the Authority, any ordinance or regulation of any local political subdivision, or any other law of the Commonwealth.*

[For the purpose of enforcing such statutes, ordinances, rules and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the political subdivision wherein the offense was committed shall have jurisdiction to try a person charged with the violation of any such statutes, ordinances, rules and regulations.]

C. The Department of State Police shall exercise the same powers upon Authority Facilities as elsewhere in the Commonwealth.

D. The Authority may enter into reciprocal or mutual aid agreements with the local political subdivisions in which the Authority Facilities are situated, any agency of the Commonwealth or of the federal government, or any combination of the foregoing, for cooperation in the furnishing of police services.

E. The police force of Arlington County shall have concurrent jurisdiction with the police force established herein at Washington National Airport. The Authority shall enter into an agreement with Arlington County regarding the exercise of police authority.

F. The sheriffs and police forces of Loudoun and Fairfax Counties shall continue to exercise concurrent jurisdiction with the police force established herein over the Authority Facilities situated within their respective counties.

§ 27. Effective date.—This act shall only become effective upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to [an Airport] *the* Authority [created by the legislatures of the Commonwealth of Virginia and the District of Columbia pursuant to an agreement or compact that is consistent with the provisions of this act]; provided, however, the Governor may make appointments for initial Authority membership at such time or times following the passage of this act as he may deem appropriate.

2. That an emergency exists and this act is in force from its passage.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 6-67

"District of Columbia Regional Airports Authority Act of 1985".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 6-200 on first and second readings, September 10, 1985, and September 24, 1985, respectively. Following the signature of the Mayor on October 9, 1985, this legislation was assigned Act No. 6-90, published in the November 1, 1985, edition of the *D.C. Register*, (Vol. 32 page 6093) and transmitted to Congress on October 10, 1985 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 6-67, effective December 3, 1985.

/s/ David A. Clarke
DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

October 10,11,16,17,18,21,22,23,24,25,28,29,30,31

November 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22

December 2

AN ACT
D.C. ACT 6-90

IN THE COUNCIL OF
THE DISTRICT OF COLUMBIA

Oct. 09, 1985

To endorse on behalf of the District government the creation of a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Regional Airports Authority Act of 1985".

Sec. 2. Definitions. For the purposes of this act, the term:

(1) "Authority facilities" means any or all airport facilities now existing or subsequently acquired or constructed or caused to be constructed by the Authority under this act, together with any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, air rights, franchises, machinery, equipment, furnishings, landscaping, easements, utilities, approaches, roadways and other facilities necessary or desirable in connection with or incidental to the facilities, including the existing Dulles Airport access road and its right-of-way, acquired or constructed by the Authority.

(2) "Authority" means the Metropolitan Washington Airports Authority to be created by the legislatures of

the Commonwealth of Virginia and the District of Columbia with an agreement or compact that is consistent with the provisions of this act, or, if the Authority to be created is later abolished, the board, body, or commission or agency succeeding to the principal functions of the Authority or upon whom the powers given by this act to the Authority shall be conferred by law.

(3) "Cost" means, as applied to Authority facilities, the cost of acquisition of all lands, structures, rights of way, franchises, easements, and other property rights and interests, the cost of lease payments, the cost of construction, the cost of demolishing, removing, or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated, the cost of any extensions, enlargements, additions and improvements, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if considered advisable by the Authority, for a period not exceeding 1 year after completion of construction, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Authority facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, the cost of bond insurance and other devices designed to enhance the creditworthiness of the bonds, and other expenses necessary or incidental to the construction of the Authority facilities, the financing of this construction, and the placing of the Authority facilities in operation. Any obligation or expenses incurred by the District of Columbia ("District") or any agency of the District, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the Authority facilities may be

regarded as part of the cost of the Authority facilities and may be reimbursed to the District or the agency out of any funds available for these purposes or the proceeds of the revenue bonds issued for Authority facilities as authorized by this act.

(4) "Bonds" or "revenue bonds" means bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under the provisions of this act.

Sec. 3. Metropolitan Washington Airports Authority created.

There is created the Metropolitan Washington Airports Authority, ("Authority"), a public body corporate and politic and independent of all other bodies, having the powers and jurisdiction enumerated by this act, and other and additional powers as shall be conferred upon it jointly by the legislative authorities of the Commonwealth of Virginia and the District or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction.

Sec. 4. Authorization of the Authority.

The Authority created by this act is authorized, when similarly authorized by the Commonwealth of Virginia, to acquire from the United States of America, by lease or otherwise, the 2 airports known as Washington National Airport and Washington Dulles International Airport and all related properties now administered by Metropolitan Washington Airports, an agency of the Federal Aviation Administration of the United States Department of Transportation, but only with the approval of the Mayor of the District of Columbia. Subject to this mayoral approval, general consent is given to conditions imposed by the Congress of the United States on acquisitions that are not inconsistent with this act. The Mayor shall procure the concurrence of the Council of the District of Columbia, by resolution, prior to Mayoral ap-

proval of the terms of the compact, lease or other agreements which effectuate the acquisition.

Sec. 5. Membership; terms; officers.

The Authority shall consist of 11 members: Five appointed by the Governor of the Commonwealth of Virginia, 3 appointed by the Mayor of the District, 2 appointed by the Governor of the State of Maryland, and 1 appointed by the President of the United States. Members representing the District shall be subject to confirmation by the Council of the District of Columbia. For the purposes of doing business, 6 members shall constitute a quorum. The failure of a single appointing official to appoint 1 or more members, as provided in this act, shall not impair the Authority's creation when the other conditions of this creation have been met.

(b) Members shall: (1) Not hold elective or appointive public office; (2) serve without compensation; and (3) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President of the United States shall not be required to reside in that area. The members of the Authority shall be entitled to reimbursement for their expenses incurred in attending the meetings of the Authority or while otherwise engaged in the discharge of their duties.

(c) Appointments to the Authority shall be for a period of 6 years. However, initial appointment shall be made as follows: Each jurisdiction shall appoint 1 member for a full 6-year term, a second member for a 4-year term and in the case of the Commonwealth of Virginia and the District, a third member for a 2-year term. The Governor of Virginia shall make the final 2 Virginia initial appointments for one 2-year and one 4-year term. The President shall make initial and subsequent appointments for 6-year terms.

(d) Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

(e) Each member may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which the member is appointed.

(f) The Authority shall elect annually 1 of its members as chairman and another as vice-chairman and shall also elect annually a secretary and a treasurer, or a secretary-treasurer, who may or may not be members of the Authority, and prescribe their powers and duties. The Authority may also appoint from its staff an assistant secretary and an assistant treasurer, or an assistant secretary-treasurer, who shall, in addition to other duties, discharge the functions of the secretary and the treasurer.

(g) The members of the Authority shall continue to serve until their successors are duly appointed. Any person appointed to fill a vacancy shall serve for the unexpired term. Any member of the Authority shall be eligible for reappointment for 1 term.

(h) The members of the Authority shall not be personally liable for any act done or action taken in their capacities as members of the Authority, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority.

Sec. 6. Powers and duties of the Authority.

For the purpose of acquiring, operating, maintaining improving, promoting and protecting Washington National Airport and Washington Dulles International Airport together as primary airports for public purposes serving the metropolitan Washington area, the Authority shall have all necessary or convenient powers including, but not limited to, the power:

(1) To adopt and amend by-laws for the regulation of its affairs and the conduct of its business;

(2) To plan establish, operate, develop, construct, enlarge, maintain, equip, operate and protect the airports;

(3) To adopt and amend regulations to carry out the powers granted by this section;

(4) To adopt an official seal and alter this seal at its pleasure;

(5) To appoint one or more advisory committees;

(6) To issue revenue bonds of the Authority for any of its purposes, payable solely from the fees and revenues pledged for their payment, and to refund its bonds, all as provided in this act;

(7) To borrow money on a short-term basis and issue from time to time its notes therefor payable on terms, conditions, or provisions as it may deem advisable;

(8) To fix, revise, charge, and collect rates, fees, rentals and other charges for the use of the airports;

(9) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

(10) To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may be necessary, and to fix their compensation and benefits. However, the Authority shall comply with any act of Congress concerning former employees of the Federal Aviation Administration and Metropolitan Washington Airports;

(11) To sue and be sued in its own name, plead and be impleaded;

(12) To construct or permit the construction of commercial and other facilities upon the airport property on terms established by the Authority and consistent with the purposes of this act;

(13) To make and enter into all contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the fur-

nishing of services to the traveling public and airport users, and these contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service, avoid duplication of services; or conserve airport property and the airport environment;

(14) To apply for, receive, and accept payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual; and

(15) To do all acts necessary or convenient to carry out the powers expressly granted in this act.

Sec. 7. Authority rules and regulations.

(a) The Authority shall have the power to adopt, amend, and repeal rules and regulations pertaining to the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

(b) Unless the Authority shall by unanimous vote of all members present determine that an emergency exists, the Authority shall, before the adoption of any rule or regulation or alteration, amendment or modification;

(1) Make the rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least 10 days;

(2) Publish a notice in a newspaper or newspapers of general circulation in the political subdivision where the Authority's facilities are located and the District declaring the Authority's intention to consider adopting the rule, regulation, alteration, amendment, or modification and informing the public that the Authority will hold a public hearing at which any person may appear and be heard for or against the adoption of the rule or regulation or the alteration, amendment, or modification, on a

day and at a time to be specified in the notice, after the expiration of at least 10 days from the day of the publication; and

(3) Hold the public hearing on the day and at the time specified in the notice of any adjournment of the hearing, and hear persons appearing for or against the rule, regulation, alteration, amendment, or modification.

(c) The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

(d) The Authority's rules and regulations relating to:

(1) Air operations and motor vehicle traffic, including but not limited to, motor vehicle speed limits and the location of and payment for public parking;

(2) Access to and use of Authority facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

(3) Aircraft operation and maintenance, shall have the force and effect of law, as shall any other rule or regulation of the Authority that shall contain a determination by the Authority that it is necessary to accord the same effect of law in the public interest; except, that, with respect to motor vehicle traffic rules and regulations, the Authority shall obtain the approval of the traffic engineer or comparable official of the political subdivision in which the rules or regulations are to be enforced. The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the political subdvisions in which the violation occurred. All other violations of the Authority's rules and regulations having the effect of law shall be punishable as misdemeanors.

Sec. 8. Police powers.

(a) The Authority's employees meeting the minimum requirements of the Commonwealth of Virginia's Criminal Justice Officer's Training Standards Commission may be given special police power by any of the circuit courts of the political subdivisions in which the Authority's facilities are located. The authority conferred upon these special police officers shall be exercised only upon the Authority's facilities and shall be in all terms consistent with the requirements of chapter 3 of title 15.1 of the Code of Virginia.

(b) These special police officers shall have all powers vested in police officers under chapter 3 of title 15.1 of the Code of Virginia and shall be responsible upon the Authority's facilities for enforcing the Authority's rules and regulations and all other applicable statutes, ordinances, rules, and regulations of the Commonwealth of Virginia and political subdivision, agencies, and instrumentalities of the Commonwealth of Virginia.

(c) These special police officers shall issue summonses to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any court of competent jurisdiction any person violating any rule or regulation.

(d) For the purpose of enforcing these statutes, ordinances, rules, and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the political subdivisions where the offense was committed shall have jurisdiction to try a person charged with the violation of the statutes, ordinances, rules, and regulations.

Sec. 9. Operation of foreign trade zone.

The Authority may establish, operate, and maintain a foreign trade zone and otherwise expedite and encourage foreign commerce.

Sec. 10. Acquisition of property; eminent domain.

(a) The Authority may acquire by purchase, lease, or grant additional lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may consider necessary or convenient for construction and operation of the airports, upon terms and at prices as may be considered by it to be reasonable and can be agreed upon between it and the owner.

(b) The District may provide services, donate real or personal property, and make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority facilities. The Authority may agree to assume or reimburse the District for any indebtedness incurred by the District with respect to facilities conveyed by the District to the Authority. With the consent of the Council of the District of Columbia, the agreement may be made subordinate to the Authority's indebtedness to others.

(c) The Authority is granted full power to exercise the right of eminent domain within the Commonwealth of Virginia in the acquisition of any lands, easements, privileges or other property interests that are necessary for airport and landing field purposes, including the right to acquire, by eminent domain, aviation easements over lands or water outside the boundaries of its airports or landing fields where necessary in the interests of safety for aircrafts to provide unobstructed air space for the landing and taking off of aircraft utilizing its airports and landing fields even though the aviation easement may be inconsistent with the continued use of the land, or inconsistent with the maintenance, preservation and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of the acquisition. Proceedings for the acquisition of lands, easements and privileges by condemnation may be instituted and conducted in the name of the Authority in accordance with title 25 of the Code of Virginia.

Sec. 11. Revenue bonds.

(a) The Authority may provide by resolution for the issuance, at 1 time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority facilities, including the refunding of federal appropriations not reimbursed to the United States Treasury by the Metropolitan Washington Airports. The principal of and the interest on these bonds shall be payable solely from the funds provided for this payment. The bonds of each issue shall be dated, shall mature at times not exceeding 40 years from their dates, as may be determined by the Authority, and may be subject to redemption or repurchase before maturity, at the option of the Authority, at prices and under these terms and conditions as may be fixed by the Authority before the issuance of the bonds. The bonds may bear interest payable at times and at rates as determined by the Authority or as determined in the manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached to the bonds, and shall fix the denominations of the bonds and the places of payment of principal and interest, which may be at any bank or trust company within or without the District of Columbia. In case any officer whose signature or a fascimile of whose signature appears on any bonds or coupons shall cease to be that officer before the delivery of the bonds, the signature or fascimile shall be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. Notwithstanding any other provision of this act or any recitals in any bonds issued under the provisions of this section, all bonds shall be considered to be negotiable instruments under the laws of the District. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as

to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell bonds in the manner, either at public or negotiated sale, and for the price, as it may determine will best effect the purposes of this section.

(b) The proceeds of the bonds shall be used solely for the payment of the cost of Authority facilities, including improvements, and shall be disbursed in the manner and under the restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost, additional bonds may in like manner be issued to provide the amount of the deficit, and, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be considered to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost, the surplus shall be deposited to the credit of the sinking fund for the bonds.

(c) Before the preparation of definitive bonds, the Authority may, under the same restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that become mutilated or have been destroyed or lost. Bonds may be issued under the provisions of this section without obtaining the consent of any agency of the District and without any other proceedings, conditions or things not specifically required by this section.

Sec. 12. Refunding bonds.

The Authority may provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium on the bonds and any interest accrued or to accrue to the date of redemption of the bonds, and if considered advisable by the Authority, for either or both of the following additional purposes: constructing improvements, extensions or enlargement of the Authority facilities in connection with which the bonds to be refunded shall have been issued; and, paying all or any part of the cost of any additional Authority facilities. The issuance of bonds, the maturities, and other details of the issuance, the rights of the holders of the bonds, and the rights, duties and obligations of the Authority in respect to the bonds, shall be governed by the provisions of this act insofar as this act may be applicable. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this act and, if sold, the proceeds of the bonds may be applied to the purchase, redemption, or payment of outstanding bonds.

Sec. 13. Pledge of funds.

All monies received pursuant to the provisions of this act, whether as proceeds from the sale of bonds, as revenues, or as grants, appropriations, or other funds provided by federal, state, or local governments, may be pledged to the payment of bonds issued by the Authority and, if so pledged, shall be considered to be trust funds to be held and applied solely as provided in this act.

Sec. 14. Marketability of bonds.

The Authority may exercise all or any part of combination of the powers granted by this act, including the power: To make covenants other than and in addition

to the covenants expressly authorized, of like, or different character; to make covenants and to do all acts as may be necessary, convenient, or desirable in order to secure its bonds or, in the absolute discretion of the Authority, as will tend to make the bonds more marketable, notwithstanding that the covenants or acts may not be enumerated in this act.

Sec. 15. Bonds as legal investments and security for public deposits.

Bonds issued by the Authority under the provisions of this act are securities in which all public officers and public bodies of the District, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds are securities that may properly and legally be deposited with and received by any municipal officer or any agency of the District for any purpose for which the deposit of bonds or obligations is now or may subsequently be authorized by law.

Sec. 16. Credits of the District not pledged.

Revenue bonds issued under the provisions of this act shall not constitute a debt of the District nor a pledge of the faith and credit of the District. The bonds shall be payable solely from funds provided for the bonds from revenues. The issuance of revenue bonds under the provisions of this act shall not directly, indirectly, or contingently obligate the District to any form of taxation whatever. All revenue bonds shall contain a statement on their face substantially to this effect.

Sec. 17. Trust agreement.

In the discretion of the Authority any bonds issued under the provisions of this act may be secured by a

trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the District. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the fees and other revenues to be received, but shall not convey or mortgage the airports or any part of the airports. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the airports, the rates or fees or other charges to be charged, and the custody, safeguarding the application of all monies. It shall be lawful for any bank or trust company incorporated under the laws of the District that may act as depositary of the proceeds of bonds or of revenues to furnish indemnifying bonds or to pledge securities as may be required by the Authority. Any trust agreement may set forth the rights and remedies of the bondholders. In addition, any trust agreement or resolution may contain other provisions the Authority considers reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the operation of the airports.

Sec. 18. Revenues.

The Authority may fix, revise, charge, and collect fees or other charges for the use of the airports, contract with any person, partnership, association, or corporation desiring the use of any part of the airports, including the right-of-way adjoining the airports for placing on

the airports telephone, telegraph, electric light or power lines, and fix the terms, conditions, rents and fees or other charges for use. Fees or other charges shall be so fixed and adjusted in respect of the aggregate of fees or other charges from the airports as to provide a fund sufficient with other revenues, if any, (1) to pay the cost of maintaining, repairing and operating the airports, (2) to pay the principal of and interest on bonds as they become due and payable, and (3) to create reserves for these purposes. The fees and other charges and all other revenues derived from the airports, except the part as may be necessary to pay the cost of maintenance, repair, and operation and provide reserves as may be provided for in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the resolution or the trust agreement in a sinking fund, which is pledged to, and charged with, the payment of the principal of and the interest on the bonds as they become due, and the redemption price or the purchase price of bonds retired by call or purchase as provided in the bonds. The pledge shall be valid and binding from the time when the pledge is made. The fees, other charges, and other revenues or other monies so pledged and subsequently received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery of the lien or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of monies to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust agreement. Except as may otherwise be provided in the resolution or the

trust agreement, the sinking fund shall be a fund for all these bonds without distinction or priority of 1 over another.

Sec. 19. Trust funds.

All proceeds from the sale of bonds and revenues derived from the bonds received pursuant to the provisions of this act shall be considered to be trust funds to be held and applied solely as provided in this Act. The Authority may, in the resolution authorizing the bonds or in the trust agreement securing the bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues of the Authority to a trustee, which may be any trust company or bank having the powers of a trust company within or without the District, which shall act as trustee of the funds, and hold and apply the funds to the purposes of this act, subject to any regulations this act and the resolution or trust agreement may provide. The trustee may invest and reinvest the funds in securities as may be provided in the resolution authorizing the bonds or in the trust agreement securing the bonds.

Sec. 20. Annual audit.

The Authority shall prepare financial statements at the end of each of its fiscal years in conformity with generally accepted accounting principles. These financial statements shall be examined annually by an independent certified public accountant in accordance with generally accepted auditing standards. Copies of each audit report shall be furnished to the Governor of the Commonwealth of Virginia and to the Mayor of the District not later than 120 days after the end of each fiscal year of the Authority and shall be open to public inspection.

Sec. 21. Remedies.

Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining to the bonds,

and the trustee under any trust agreement, except to the extent the rights given by this act, may be restricted by the trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the District, or granted by this act or under the trust agreement or the resolution authorizing the issuance of the bonds and may enforce and compel the performance of all duties required by this act or by the agreement or resolution to be performed by the Authority or by any officer or agent of the Authority including the fixing, charging, and collection of fees or other charges.

Sec. 22. Exemption from taxation.

The exercise of the powers granted by this act shall be in all respects for the benefit of the inhabitants of the District for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience, and prosperity, and as the operation and maintenance of the airports by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the airports or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom; and the bonds issued under the provisions of this act, their transfer and the income from the bonds, including any profit made on the sale of the bonds, shall at all times be free and exempt from taxation by the District.

Sec. 23. Jurisdiction of courts; liability for contracts and torts.

(a) The courts of the Commonwealth of Virginia shall have original jurisdiction over all actions brought by or against the Authority, which courts shall in all cases apply the law of the Commonwealth of Virginia.

(b) The Authority shall be liable for its contracts and for its torts and those of its members, officers, employees, and agents committed in the conduct of any proprietary function, in accordance with the law of the Commonwealth of Virginia but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for breach of contracts and torts for which the Authority shall be liable, as provided by this act, shall be by suit against the Authority. Nothing in this act shall be construed as a waiver by the District or the Commonwealth of Virginia or its political subdivisions of any immunity from suit.

(c) The Authority shall be responsible for all executory contracts entered into by the United States with respect to the former Metropolitan Washington Airports before the date of acquisition of those airports, except that the procedure for disputes resolution contained in any contract shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract.

(d) The Authority shall not be responsible for any tort claims arising before the date of transfer.

Sec. 24. Procurement exemption.

In light of the multi-jurisdictional nature of the Authority, an exemption is provided to the Authority from all laws and regulations of the District governing public procurement.

Sec. 25. Act liberally construed.

This Act, being necessary for the welfare of the District and its inhabitants, shall be liberally construed to effect its purposes.

Sec. 26. Constitutional construction.

The provisions of this act are severable and if any of its provisions are held unconstitutional by any court of

competent jurisdiction, the decision of that court shall not affect or impair any of the remaining provisions of this act. It is declared to be the legislative intent that this act would have been adopted had any unconstitutional provisions not been included.

Sec. 27. Inconsistent laws inapplicable.

All other general or special laws inconsistent with any provision of this act are declared to be inapplicable to the provisions of this act.

Sec. 28. Effective date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of vote by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to an Airports Authority created by the legislatures of the Commonwealth of Virginia and the District pursuant to an agreement or compact that is consistent with the provisions of this act, whichever occurs later.

/s/ David A. Clarke
Chairman
Council of the District of Columbia

/s/ Marion Barry
Mayor
District of Columbia

APPROVED: October 9, 1985

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. Law 7-18

"District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1987".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 7-172 on first and second readings, April 14, 1987, and May 5, 1985, respectively. Following the signature of the Mayor on June 1, 1987, this legislation was assigned Act 7-32, published in the June 12, 1987, edition of the *D.C. Register,* (Vol. 34 page 3804) and transmitted to Congress on June 10, 1987, for a 30-days review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 7-18, effective July 25, 1987.

/s/ David A. Clarke
DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

June 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30

July 1, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24

AN ACT

D.C. ACT 7-32

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Jun. 01, 1987

To amend the District of Columbia Regional Airports Authority Act of 1985 to conform with legislation passed by the legislature of the Commonwealth of Virginia and by the United States Congress, to authorize the Metropolitan Washington Airports Authority to establish a board of review, and to establish civil penalties for violations of rules of the Metropolitan Washington Airports Authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1987".

Sec. 2. Findings.

The Council of the District of Columbia ("Council") finds that:

(1) Congress adopted the Metropolitan Washington Airports Act of 1986, approved October 30, 1986 (100 Stat. 3341; 49 U.S.C. app. 2456) ("Airports Act"), which authorized the transfer of operating responsibility of Washington Dulles International Airport and Washington National Airport to a local authority under a 50-year lease.

(2) Section 6007 of the Airports Act requires that the powers and jurisdiction of the Metropolitan Washington Airports Authority be conferred jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction.

(3) The Council adopted legislation in 1985 which conformed to the original Virginia Statute authorizing a local authority, and it is therefore appropriate to adopt amendments in conformity with amendments recently approved by the legislature of the Commonwealth of Virginia in S. 672, 169 Leg., 1987 Sess. (1987) in response to the Airports Act.

Sec. 3. The District of Columbia Regional Airports Authority Act of 1985, effective December 3, 1985 (D.C. Law 6-67; D.C. Code, sec. 7-1101 note) ("District act"), is amended as follows:

(a) Section 2 is amended by striking in paragraph (2) the phrase "to be created by the legislatures of the Commonwealth of Virginia and the District pursuant to an agreement or compact that is consistent with the provisions of this act, or, if the Authority to be created is later abolished," and inserting in its place the phrase "created by this act and by similar enactment by the Commonwealth of Virginia, or if the Authority is abolished,".

(b) Section 5(h) is amended to read as follows:

"(h) The members of the Authority and its board of review, including any nonvoting members, shall not be personally liable for any act done or action taken in their capacities as members of the Authority or its board of review, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority.".

(c) Section 6 is amended:

(1) By striking from paragraph (2) the second appearance of the word "operate";

(2) By inserting in paragraph (5) after the word "committees" the phrase "and to establish a board of review";

(3) By striking from paragraph (10) the phrase "However, the" and inserting in its place the phrase "Employees of the Authority shall not participate in any strike or assert any right to strike against the Authority, and any employment agreement entered into by the Authority shall contain an explicit prohibition against strikes by the employee or employees covered by such agreement. The";

(4) By inserting in paragraph (12) after the word "facilities" the phrase "consistent with the purposes of this act", and by striking from paragraph (12) after the word "Authority" the phrase "and consistent with the purposes of this act";

(5) By inserting in paragraph (13) after the word "users," the phrase "including contracts for normal governmental services on a reimbursable basis with local political subdivisions where the Authority facilities are situated and with the District of Columbia government,";

(6) By striking at the end of paragraph (14) the word "and";

(7) By adding a new paragraph (15a) to read as follows:

"(15a) To make payments to reimburse the local political subdivisions where the Authority facilities are situated for extraordinary law enforcement costs incurred by such localities; and"; and

(8) By adding a new subsection (a-1) to read as follows:

"(a-1) Pursuant to section 6007(b) of the Metropolitan Washington Airports Act of 1986, approved October 30, 1986 (100 Stat. 3341; 49 U.S.C. app. 2456), the Authority is established solely to operate and improve both metropolitan Washington airports as primary airports serving the metropolitan Washington area and shall be independent of the Commonwealth of Virginia and its local political subdivisions, the District of Columbia, and the federal government in the performance and exercise of the airport-related duties and powers enumerated in this section. Any conflict between the exercise of these enumerated powers by the Authority and the powers of any local political subdivision within which Authority facilities are situated shall be resolved in favor of the Authority.".

(d) Section 7 is amended:

(1) By striking in paragraph (b)(2) the phrase "in the political subdivision where the Authority's facilities are located and the District" and inserting in its place the phrase "in the District of Columbia and in the local political subdivisions of the Commonwealth of Virginia where the Authority facilities are located";

(2) By striking in subsection (d) the last sentence; and

(3) By adding new subsections (e), (f), (g), (h), and (i) to read as follows:

"(e) The violation of any rule or regulation of the Authority establishing a noise limitation on aircraft that operate at the Authority Facilities shall subject the violator, in the discretion of the circuit court of any political subdivision where the facility is located to a civil penalty not to exceed $2,500 for each violation. The penalty shall be paid to the Authority. With the consent of the violator or the accused violator of a rule establishing aircraft noise limits, the Authority may provide, in an order issued against the violator or accused violator, for the payment of civil charges in specific sums not to ex-

ceed the limit that could be imposed by the court. Such civil charge when paid shall be in lieu of any civil penalty that could be imposed by the court. Any court proceeding shall be within the exclusive jurisdiction of the circuit court and shall be a civil proceeding at law brought by the Authority.

"(f) The violation of any Authority rule or regulation, having the force and effect of law, shall be a Class 1 misdemeanor unless otherwise specified by chapter 598 of the 1985 Acts of Assembly or unless a lesser penalty is set by the Authority in the rule or regulation. The rules of criminal procedure and evidence that apply throughout the Commonwealth of Virginia ("Commonwealth") shall apply to the adjudication of any case involving the violation of any Authority rule or regulation having the force and effect of law.

"(g) The courts of the Commonwealth shall take judicial notice of the Authority's regularly adopted rules and regulations. For the convenience of the courts which may regularly hear cases arising under the Authority's rules and regulations, the Authority may certify to the clerk of such court a copy of its rules and regulations. Any such certification, when signed by the chairman of the Metropolitan Washington Airport Authority, shall be accepted as evidence of the facts therein stated.

"(h) With respect to the violation of any statute of the Commonwealth, local ordinance, or Authority rule or regulation having the force and effect of law occurring at the Authority Facilities:

"(1) The matter shall be within the jurisdiction of the state courts of the political subdivision where the violation occurred; violations occurring at Washington National Airport shall be within the jurisdiction of the courts for Arlington County;

"(2) The attorney for the Commonwealth shall have authority to prosecute those offenses in the name of the Commonwealth or local government as appropriate; and

the county or city attorney, if otherwise authorized to prosecute offenses in the name of the county or city, shall have authority to prosecute those offenses in the name of the county or city; and

"(3) Sheriffs and clerks of the court shall provide those same services and exercise those same powers with respect to Authority Facilities within their jurisdiction as for their political subdivisions.".

(e) Section 8 is amended to read as follows:

"Sec. 8. Police powers.

"(a) The Authority is authorized to establish and maintain a regular police force and to confer police powers to be exercised with respect to offenses occurring on the Authority Facilities upon its employees meeting the minimum requirements of the Commonwealth of Virginia's Department of Criminal Justice Services.

"(b) Such police officers shall have all powers vested in police officers under Chapter 3 of Title 15.1, Chapter 11 of Title 16.1, Title 18.2, and Title 46.1 of the Code of Virginia and shall be responsible upon the Authority Facilities and within 300 yards of the Facilities for enforcing the laws of the Commonwealth, the Authority's rules and regulations, and all other applicable ordinances, rules, and regulations.

"(c) The police officers may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any judicial officer of competent jurisdiction any person violating, upon Authority Facilities, any rule or regulation of the Authority, any ordinance or regulation of any local political subdivision, or any other law of the Commonwealth.

"(d) The Department of State Police shall exercise the same powers upon Authority Facilities as elsewhere in the Commonwealth.

"(e) The Authority may enter into reciprical or mutual aid agreements with the local political subdivisions in which the Authority Facilities are situated, any agency

of the Commonwealth, or of the federal government, or any combination of the foregoing, for cooperation in the furnishing of police services.

"(f) The police force of Arlington County shall have concurrent jurisdiction with the police force established herein at Washington National Airport. The Authority shall enter into an agreement with Arlington County regarding the exercise of police authority.

"(g) The sheriffs and police forces of Loudon and Fairfax Counties shall continue to exercise concurrent jurisdiction with the police force established herein over the Authority Facilities situated within their respective counties.".

(f) Section 28 is amended by striking the phrase "an Airports Authority created by the legislatures of the Commonwealth of Virginia and the District pursuant to an agreement or compact that consistent with the provisions of this act, whichever occurs later.", and inserting in its place the phrase "the Authority.".

Sec. 4. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).

/s/ David Clarke
Chairman
Council of the District of Columbia

/s/ Marion Barry
Mayor
District of Columbia

Approved: June 1, 1987

LEASE

of the

METROPOLITAN WASHINGTON AIRPORTS

between

THE UNITED STATES OF AMERICA

acting by and through

THE SECRETARY OF TRANSPORTATION

and

THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

ENTERED INTO AT WASHINGTON, DISTRICT OF COLUMBIA

THIS SECOND DAY OF MARCH, 1987

[In Relevant Part]

AGREEMENT
AND DEED OF LEASE
March 2, 1987

Agreement and Deed of Lease between the United States of America, acting by and through the Secretary of Transportation ("the Secretary"), and the Metropolitan Washington Airports Authority ("the Airports Authority"), a public body politic and corporate created by compact between the Commonwealth of Virginia and the District of Columbia with the consent of the Congress.

WHEREAS, in the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591 ("the Act"), the Congress declared its purpose to be to authorize the transfer of operating responsibility under a long-term lease of the Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control, management, operation, and development of these important transportation assets;

WHEREAS, the Act authorized the Secretary to enter into such a lease in order to enable the financing of badly needed capital improvements;

WHEREAS, in Chapter 598, Virginia Acts of Assembly, 1985, as it may be amended, and in the District of Columbia Regional Airports Authority Act of 1985, D.C. Law 6-67, as it may be amended, the Commonwealth of Virginia and the District of Columbia, respectively, enacted essentially identical laws to create the Airports Authority to acquire the Metropolitan Washington Airports from the United States, by lease or otherwise;

WHEREAS, the Congress has found that the two federally owned airports in the metropolitan area of Washington, District of Columbia constitute an important and

growing part of the commerce, transportation and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

WHEREAS, the Congress has found that the Federal Government has a continuing but limited interest in the operation of the two federally owned airports serving the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

WHEREAS, the Congress has found that operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978;

WHEREAS, the Congress has found that all other major air carrier airports in the United States are operated by public entities at the State, regional or local level;

WHEREAS, the Congress has found that any change in the status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and the State governments involved;

WHEREAS, the Congress has found that an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports; and

WHEREAS, the Congress has found that the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

NOW THEREFORE, under the authority of the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591, 100 Stat. 3341; Chapter 598, Virginia

Acts of Assembly, 1985, as it may be amended; and the District of Columbia Regional Airiports Authority Act of 1985, D.C. Law 6-67, as it may be amended; the parties do hereby agree as follows, for themselves and for their successors:

Article 1. *Definitions.*

The following terms when used in this lease shall have the meanings indicated below:

1.A. Act

The term "Act" means the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591, 100 Stat. 3341.

1.B. Airports

The term "Airports" means the Metropolitan Washington Airports.

1.C. Airports Authority

The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body created by the Commonwealth of Virginia and the District of Columbia.

1.D. Airport Purposes

The term "Airport Purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities.

1.E. Board of Directors

The term "Board of Directors" means the Board of Directors of the Airports Authority.

1.F. Board of Review

The term "Board of Review" means the Board of Review of the Airports Authority established by the Board of Directors.

1.G. Employees

The term "Employees" means all permanent Federal Aviation Administration personnel employed on the date this lease takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration, U.S. Department of Transportation.

1.H. Leased Premises

The term "Leased Premises" means the real property described in paragraph 3.A. hereof.

1.I. Master Plan

The term "Master Plan" means a generalized, comprehensive plan for the physical development of Washington National Airport or Washington Dulles International Airport as may be revised from time to time by the Airports Authority.

1.J. Metropolitan Washington Airports

The term "Metropolitan Washington Airports means Washington National Airport and Washington Dulles International Airport.

1.K. Secretary

The term "Secretary" means the Secretary of Transportation of the United States, or her successor.

1.L. Washington Dulles International Airport

The term "Washington Dulles International Airport" means the airport constructed under the act entitled "An Act to auhorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

1.M. Washington National Airport

The term "Washington National Airport" means the airport described in the act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

Article 2. *Purpose.*

The purpose of this lease is to transfer the operating responsibility for the Metropolitan Washington Airports to the Metropolitan Washington Airports Authority pursuant to the Act and to make the conditions imposed therein upon the authority of the Secretary to enter into a lease of the Metropolitan Washington Airports applicable to the Airports Authority.

Article 3. *Leased Premises.*

3.A. *Grant of Lease.*

The Secretary, on behalf of the United States of America, hereby demises and leases to the Airports Authority the two Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, being the parcels of land, together with all right, title and interest, if any, of the Secretary in and to any street or road abutting or included within the described land, and all rights of way, easements, licenses and permits relating thereto, and all improvements thereon, bounded and described in *Appendix A.*

3.B. *Scope.*

The Airports Authority is hereby authorized to occupy, operate, control and use, for the term of this lease, all land, improvements, buildings, fixtures, easements, rights of ingress and egress and appurtenances thereto belonging, owned by, used or controlled by or assigned to the United States of America on or at the Leased Premises. Subject to the provisions of this lease, the Airports Authority shall have, consistent with the 50-year minimum

term of this lease, full power and dominion over, and complete discretion in, operations and development of the Airports, and shall have the same proprietary powers and be subject to the same restrictions with respect to federal law as any other airport, except as otherwise provided herein.

3.C. *Warranty of Title.*

The Secretary hereby warrants and covenants on behalf of the United States of America that the United States of America is the owner of good, fee simple and marketable title to all of the Leased Premises, free and clear of all liens, debts, encumbrances or restrictions of whatsoever kind, nature and description, other than leases and easements presently in effect that do not adversely affect the operation of the Airports, and the Secretary has full power and authority to convey the interests described in this lease in accordance with the provisions hereof.

3.D. *Quiet Enjoyment.*

The Secretary covenants on behalf of the United States of America that, during the period commencing on the effective date of this lease and ending on the expiration of the term of this lease in accordance with the terms hereof, the Airports Authority shall fully, peaceably and quietly occupy and enjoy the full possession of the Leased Premises without hinderance or interference by the Secretary or any other person or entity.

Article 4. *Transfer of Personal Property.*

The Secretary, on behalf of the United States of America, hereby grants, transfers and conveys to the Airports Authority, without condition (and not as a lease), all right, title and interest in and to all equipment, materials, furnishings and all other personal property appurtenant to or located on the Leased Premises, excluding personal property necessary for the Secretary's Air Traffic Control

responsibilities, and including, but not limited to, the items specifically described in the inventory to be completed before the effective date of this lease and identified as "Inventory for Metropolitan Washington Airports." Such personal property is transferred in "as is" condition and the Secretary makes no warranties as to the suitability of any such property for any particular use.

* * * *

Article 9. *Effective Date.*

This lease shall be effective on the date on which the Secretary and the Airports Authority certify that the Governor of Virginia and the Mayor of the District of Columbia have approved the lease and that all conditions in Articles 15 and 20 have been satisfied.

Article 10. *Term and Extensions.*

10.A. *Term.*

The term of this lease shall be for fifty years commencing on the effective date as determined under Article 9.

10.B. *Lease Extensions.*

The Secretary and the Airports Authority may at any time negotiate an extension of this lease.

10.C. *Good Faith Negotiation.*

In the event that the Airports Authority reasonably shall determine that an extension of the term of this lease is required in order to entitle the Airports Authority to amortize the indebtedness that will result from the financing of any improvements at the Airports over a period equal to the estimated useful life of such improvements, the parties agree to negotiate in good faith a commensurate extension of such term.

10.D. *Expiration.*

Upon the expiration of this lease, the Airports Authority covenants and agrees that it will give up, surrender

and deliver to the Secretary the Leased Premises together with all buildings, structures and improvements thereon (as the same may have been altered or replaced), as well as all personal property, furniture, fixtures and other equipment contained therein and used exclusively in connection with the operation of the Airports, the intent being that when the Leased Premises are returned to the Secretary, such Leased Premises shall be in good condition as operating airports, depreciation, obsolescence, and ordinary wear and tear excepted, all of which shall be free and clear of any and all liens, debts or encumbrances which would necessitate payment by the Secretary.

Article 11. *Continuing Obligations.*

11.A. *Airports Authority's Legal Status.*

The Airports Authority is a public body corporate and politic that meets the requirements of section 6007 of the Act. The Airports Authority agrees to refrain from action that would alter such status and to use its best efforts to maintain this status.

11.B. *Operation of Airports.*

The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

11.C *Airport Improvement Program Requirements*

The Airports Authority shall be subject to the requirements of section 511(a) of the Airport and Airway Improvement Act of 1982 (hereinafter the "1982 Act") and the assurances and conditions required of grant recipients under the 1982 Act as of the date the lease takes effect, to the same extent as would be an airport that received a grant under the 1982 Act on the effective date of this lease. As in the case of any other airport, any such assurance which, by its terms, is project specific shall

apply only to projects on which Federal grant funds are expended. Notwithstanding section 511(a)(12) of the 1982 Act, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of the Airports.

11.D. *Contracts.*

In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

11.E. *Continuation of Regulations.*

All regulations applicable to the Metropolitan Washington Airports and included in Part 159 of the Federal Aviation Regulations, 14 C.F.R. Part 159, on the effective date of this lease shall become regulations of the Airports Authority on that date and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

11.F. *Limitations on Aircraft Operations.*

(1) The Airports Authority shall not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport as in effect on October 18, 1986, and shall not, after the effective date of this lease, impose a limitation on the number of passengers taking off or landing at Washington National Airport.

(2) The Airports Authority agrees that any action changing or having the effect of changing the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by

adoption of or amendment to regulations of the Airports Authority.

11.G. *Assumption of Rights, Liabilities and Obligations.*

(1) *In General.* Except as provided in subparagraph 2 of this paragraph, the Airports Authority hereby agrees that it shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Secretary with respect to the Metropolitan Washington Airports organization of the Federal Aviation Administration on the effective date of this lease, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages, awarded, or appeal taken. To the extent practicable, the Secretary shall provide at the effective date of this lease a summary list of the foregoing which involve material obligations.

(2) *Exceptions.* The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the effective date of this lease shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(3) *Payments Into Employee Compensation Fund.* The Federal Aviation Administration, and not the Airports Authority, shall be responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the effective date of this lease in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events aris-

ing before such date, whether or not a claim has been filed or is final on such date.

11.H. *Use of Certain Revenues.*

No landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(1) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(2) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

11.I. *General Aviation Fees.*

The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

11.J. *Reporting Requirement.*

The Airports Authority agrees to provide annually to the Secretary a written report of any demolition during the previous year of structures conveyed under this lease.

Article 12. *Capital Improvements.*

12.A. *Master Plans.*

The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports, including the adoption of the Dulles Master Plan and the Completion of a Master Plan for Washington National Airport, and may revise such Master Plans from time to time or

adopt subsequent Master Plans for the development of the Airports. Major improvements to the Airports shall be consistent with the most recently adopted Master Plans.

12.B. *Improvement Schedule.*

The Airports Authority acknowledges its intent, to the extent practicable, to:

(1) pursue the improvement, construction and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within five years of the earliest date on which the Airports Authority issues bonds or other long-term evidences of indebtedness.

Article 13. *Board of Review.*

13.A. *Establishment and Composition.*

Before taking any actions listed in paragraph 13.D. of this Article, the Board of Directors shall establish a nine-member Board of Review of the Airports Authority and appoint to it representatives of the users of the Metropolitan Washington Airports who will serve in their individual capacities. The Board of Directors shall appoint:

(1) two members of the Public Works and Transportation Committee and two members of the Appropriations Committee of the U.S. House of Representatives from a list or lists of recommended appointees provided by the Speaker of the House;

(2) two members of the Commerce, Science, and Transportation Committee and two members of the Appropriations Committee of the U.S. Senate from a list or lists of recommended appointees provided by the President pro tempore of the U.S. Senate; and

(3) one member chosen alternatively from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. The Board of Directors may not appoint a member of the House of Representatives or the Senate from Maryland or Virginia, or the Delegate from the District of Columbia, to the Board of Review.

13.B. *Terms.*

Members of the Board of Review appointed under subparagraphs (1) and (2) of paragraph 13.A. above shall be appointed for six years, except that of the members first appointed, one member under each of subparagraphs (1) and (2) shall be appointed for a term of two years and one member under each of subparagraphs (1) and (2) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (3) of paragraph 13.A. shall be appointed for terms of two years. A vacancy in the Board of Review shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

13.C. *Procedures.*

The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board of Review shall meet at least once each year and shall meet at the call of the chairman or three members of the Board. Any decision of the Board of Review under paragraph 13.D. or 13.F. shall be by a vote of five members.

13.D. *Disapproval Procedure.*

The Board of Directors shall submit the following actions to the Board of Review at least thirty days (or at

least sixty days in the case of the annual budget) before they are to become effective:

(1) the adoption of an annual budget;

(2) the authorization for the issuance of bonds;

(3) the adoption, amendment, or repeal of a regulation;

(4) the adoption or revision of a Master Plan, including any proposal for land acquisition; and

(5) the appointment of the chief executive officer.

If the Board of Review does not disapprove an action within thirty days of its submission under this Article, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Board of Directors and shall give reasons for the disapproval, and that action shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with paragraph 13.D., the Airports Authority shall not obligate or expend any money in such fiscal year, except for (1) debt service on previously authorized obligations, and (2) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

13.E. *Request for Consideration of Other Matters.*

The Board of Review may request the Board of Directors to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Board of Directors shall consider and vote, or report, on the matter as promptly as feasible.

13.F. *Participation in Meetings of the Airports Authority.*

Members of the Board of Review shall be permitted to participate as nonvoting members in meetings of the Board of Directors.

13.G. *Staff.*

The Board of Review may hire two staff persons to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board of Review may require. All such staff shall be employees of the Airports Authority.

13.H. *Effect of Litigation.*

The Airports Authority agrees that if the Board of Review is unable to carry out its functions described in this Article by reason of a judicial order, the Airports Authority will not take any action that must be submitted to the Board of Review under paragraph 13.D. above.

* * * *

Article 16. *Payments.*

16.A. *Lease Payments.*

The Airports Authority shall pay an annual rental to the account of the United States Treasury. For the first year of this lease, such annual rental shall be $3,000,000. Subsequent annual rental payments shall be adjusted as of each anniversary of the effective date of this lease so as to equal $3,000,000.00 in 1987 dollars by applying the Implicit Price Deflator for the Gross National Product published by the Department of Commerce in the March edition of the Survey of Current Business, or the appropriate successor index, as determined by the Secretary of Commerce. The parties may renegotiate the level of lease payments attributable to inflation costs every ten years. Lease payments shall be made from any moneys of the Authority legally available for such purpose, after the Authority shall have first (i) satisfied its contractual obligations in respect of debt service on its bonds and other indebtedness and (ii) paid or set aside the amounts required for payment of the operating and maintenance expenses of the Airports. Subject to the foregoing, the Airports Authority shall make lease

payments in semiannual installments commencing six months after the effective date of this lease. At the end of each month, the Airports Authority shall direct available funds into a reserve of the Airports Authority for purposes of making such lease payments, intended to accumulate on as equal a basis as possible the amounts due on the next lease payment date, which reserve shall be deposited in interest-bearing accounts or investment selected by the Airports Authority, with the rent payment and the interest actually accrued on the reserve account to be payable to the Treasury on the next lease payment date.

16.B. *Retirement Obligations.*

(1) Not later than one year after the effective date of this lease, the Airports Authority shall pay to the account of the United States Treasury an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Civil Service Retirement and Disability Fund due to discontinued service retirement under section 8336(d)(1) of Title 5, United States Code, of Employees who elect not to transfer to the Airports Authority.

(2) Not later than one year after the effective date of this lease, the Airports Authority shall pay to the Treasury of the United States an amount determined by the Office of Personnel Management to represent the present value of the difference between (a) the future cost of benefits payable from the Civil Service Retirement and Disability Fund and due the Employees covered under section 6008(e) of the Act that are attributable to the period of employment following the effective date of this lease, and (b) the contributions made by the Employees and the Airports Authority under section 6008(e) of the Act. In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

16.C. *Delinquent Payments.*

In the event payments under this lease are delinquent so as to constitute an Event of Default under subparagraph B.(1) of Article 23, the Secretary may, in addition to other rights available under this lease, assess interest at the Treasury Current Value of Funds Rate as prescribed by the Secretary of the Treasury on the date payment was due. In addition to this interest, penalty charges not to exceed six percent per year shall be assessed on any portion of a payment which is over 90 days past delinquent. Penalty charges shall accrue from the date the payment became delinquent and shall continue to accrue until payment is received. Delinquent payments may be collected by administrative offset whenever possible.

* * * *

Article 19. *Hold Harmless.*

To the extent permitted by applicable law, the Airports Authority shall indemnify, defend, and hold harmless the Secretary, her agents and employees, from any and all claims, liability, damage and expense incurred by reason of death, injury, loss or damage of or to persons or property arising out of the Airport Authority's operation, use and occupancy of the Metropolitan Washington Airports after the effective date of this lease. As between the parties hereto, the Airports Authority assumes all risk and liability for itself, its agents, employees, or contractors for any injury to persons or property resulting in any manner from the conduct of its operations, and the operations of its agents, or employees, and for any loss, cost, damage or expense resulting at any time from any cause due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its agents, or its employees, while occupying or operating the Metropolitan Washington Airports. Nothing herein shall be construed to indemnify the Secretary, her agents and employees for claims, liability, damage

and expense arising in whole or in part from their own negligent or intentional acts or omissions.

* * * *

Article 22. *No Assignment.*

The Airports Authority shall not, through assignment of this lease or otherwise, substitute any other person for the Airports Authority as the party obligated as the tenant under this lease. Notwithstanding the foregoing, the Airports Authority shall be entitled from time to time and in its discretion to create easements, grant licenses, and sublease portions of the Leased Premises for use by subtenants, for purposes consistent with, and subject to the provisions of, this lease. No such sublease shall relieve the Airports Authority from any of its obligations pursuant to this lease.

Article 23. *Defaults, Events of Defaults and Remedies.*

23.A. *Defaults.*

Each of the following shall constitute a default by the Airports Authority:

(1) failure by the Airports Authority to pay when due any lease payment required to be made by Article 16 hereof;

(2) use of the Leased Premises for other than Airport Purposes; and

(3) breach by the Airports Authority of any provision, other than those covered above, of this lease.

23.B. *Events of Default.*

Each of the following shall constitute an Event of Default:

(1) the continuation of a default described in subparagraph A.(1) of this Article for 30 days after the due date of such payment;

(2) the continuation of a default described in subparagraph A.(2) of this Article for 30 days after the receipt by the Airports Authority of a written notice from the Secretary specifying the claimed default, the affected portion of the Leased Premises, and the nature of the uses asserted not to be for Airport Purposes, provided that no Event of Default shall occur if the Airports Authority shall in good faith have commenced, within such 30 day period, to remedy such default and shall diligently and continuously proceed to cure such default; or

(3) the continuation of a default described in subparagraph A.(3) of this Article for 30 days after the receipt by the Airports Authority of a written notice from the Secretary specifying the claimed default, provided that no Event of Default shall occur if the Airports Authority shall in good faith have commenced, within such 30 day period, to remedy such default and shall diligently and continuously proceed to cure such default.

23.C. *Remedies.*

Upon the occurrence and during the continuation of any Event of Default

(1) described in subparagraph B.(1) or B.(3), of this Article, the Secretary may request the Attorney General to bring an appropriate action to compel the Airports Authority and its officers and employees to comply with the terms of this lease, and

(2) described in subparagraph B.(2) of this Article, the Secretary shall (a) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of the Leased Premises in conformity with Airport Purposes, and (b) retake possession of such portion of Leased Premises if the Airports Authority fails to bring the use of such portion into a conforming

use within a reasonable period of time, as determined by the Secretary.

23.D. *Rights and Remedies.*

The rights and remedies of the Secretary in this Article are exclusive of any other rights and remedies.

Article 24. *Disputes.*

24.A. *Litigation Procedure.*

Under section 6005(e) of the Act, the district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of this lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party. An action to enforce the terms and conditions of this lease may also be brought on behalf of the Airports Authority in a district court of the United States.

Except as a court may order or the parties to this lease may otherwise agree in writing, pending resolution of any action under this Article, the parties shall proceed diligently with performance of all obligations under this lease.

24.B. *Litigation Records.*

Records relating to matters litigated under this Article or to litigation or the settlement of claims arising under or relating to this lease shall be retained until such litigation (including any appeals) or claims are disposed of.

* * * *

Article 27. *Lease Not Affected by Oral Agreement.*

No oral statement of any person shall modify or otherwise affect the terms, conditions, or limitations stated in this lease. All modifications to this lease must be made in writing by the Secretary and the Airports Authority or their authorized representatives.

Article 28. *Law of Agreement.*

This lease shall be governed by and construed in accordance with federal law. To the extent that the application of federal law requires or permits the application or consideration of state law, the parties agree that the law of the Commonwealth of Virginia is most relevant to this lease and shall be applied or considered. The powers of the Secretary with respect to this lease shall be construed in accordance with and governed by Federal law, and the powers of the Airports Authority with respect to this lease shall be construed in accordance with and governed by Virginia law.

Article 29. *No Waiver.*

No failure by either party to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no payment or acceptance of full or partial payments during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No waiver of any breach shall affect or alter this lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

Article 30. *Captions.*

The captions and headings in this lease are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this lease or the intent of any provision thereof.

Article 31. *Partial Invalidity.*

If any term or provision of this lease, or the application thereof to any person or circumstance, shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this

lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of the lease shall be valid and be enforced to the fullest extent permitted by law.

Article 32. *Certificate of the Secretary.*

The Secretary agrees to execute and deliver to the Airports Authority and/or any other person or entity designated by the Airports Authority, at any time and from time to time, upon not less than 30 days' prior written notice by the Airports Authority (which notice shall state that the Airports Authority requires same in connection with a financing or other undertaking), a statement in writing:

(i) certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the lease is in full force and effect as modified and stating the modifications);

(ii) stating the dates to which lease payments and other charges hereunder have been paid by the Airports Authority;

(iii) stating whether, to the best knowledge of the Secretary, the Airports Authority is in default in the performance of any covenant, agreement or condition contained in this lease, and if so, specifying the nature of such default; and

(iv) stating the address to which notices to the Secretary are to be sent.

Any such statement delivered by the Secretary may be relied upon by any lender, bond holder, trustee or other person proposing to enter into agreements with the Airports Authority as an estoppel of the Secretary's right to assert a position inconsistent with such position.

* * * *

Article 35. *Memorandum of Lease.*

Upon the request of the Airports Authority, the Secretary agrees to execute, in recordable form, a short-form memorandum of this lease, which memorandum may be recorded at the Airports Authority's expense in appropriate land records.

ENTERED INTO THIS SECOND DAY OF MARCH, 1987

For the United States of America:

/s/ Elizabeth Hanford Dole
ELIZABETH HANFORD DOLE
Secretary of Transportation

For the Metropolitan Washington Airports Authority:

/s/ Linwood Holton
A. LINWOOD HOLTON, JR.
Chairman, Board of Directors

[Notary Stamp Omitted in Printing]

APPROVED, pursuant to section 3 of Chapter 598, Virginia Acts of Assembly, 1985 Session:

/s/ Gerald L. Baliles
GERALD L. BALILES
Governor of Virginia

APPROVED, pursuant to section 4 of D.C. Law 6-67:

/s/ Marion Barry, Jr.
MARION BARRY, JR.
Mayor of the District of Columbia

AMENDMENT NO. 1

to the

LEASE

of the

METROPOLITAN WASHINGTON AIRPORTS

between

THE UNITED STATES OF AMERICA

acting by and through

THE SECRETARY OF TRANSPORTATION

and

THE METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

WHEREAS, the Metropolitan Washington Airports Authority (the "Airports Authority") and the United States of America, acting by and through the Secretary of Transportation (the "Secretary"), entered into a lease dated March 2, 1987 (the "Lease"), whereby the Secretary leased to the Airports Authority Washington National Airport and Washington Dulles International Airport (the "Metropolitan Washington Airports") for a term of fifty (50) years, effective June 7, 1987;

WHEREAS, the Airports Authority has a continuing obligation to comply with the Act;

WHEREAS, The Act has been amended and it is necessary to clarify that the Airports Authority's obligation extends to the Act as amended;

IT IS NOW, THEREFORE, agreed that the Lease is amended as follows:

1. In Article 1, Definitions, paragraph 1.A. "Act" is amended by inserting at the end thereof, the words "as amended by Title VII of Public Law 102-240."

2. In Article 11, paragraphs 11.A. through 11.J. are redesignated as paragraphs 11.B. through 11.K.

3. In Article 11, add new paragraph 11.A. to read as follows:

   "11.A. *Obligation to Comply with the Act.*

   The Airports Authority agrees to comply with the conditions imposed by the Act."

4. Article 13 is deleted in its entirety.

All other provisions of the Lease shall remain unchanged.

ENTERED INTO THIS 30th DAY OF DECEMBER, 1991

For the United States of America:

/s/ James B. Busey
ADMIRAL JAMES B. BUSEY
Acting Secretary of Transportation

For the Metropolitan Washington Airports Authority:

/s/ A. Linwood Holton, Jr.
A. LINWOOD HOLTON, JR.
Chairman, Board of Directors

APPROVED, pursuant to section 3 of Chapter 598, Virginia Acts of Assembly, 1985 Session:

THE HONORABLE L. DOUGLAS WILDER
Governor of Virginia

APPROVED, pursuant to section 4 of D.C. Law 6-67:

/s/ Sharon Pratt Kelly
THE HONORABLE SHARON PRATT KELLY
Mayor of the District of Columbia

APPROVED, pursuant to section 3 of Chapter 598, Virginia Acts of Assembly, 1985 Session:

/s/ L. Douglas Wilder
THE HONORABLE L. DOUGLAS WILDER
Governor of Virginia

APPROVED, pursuant to section 4 of D.C. Law 6-67:

THE HONORABLE SHARON PRATT KELLY
Mayor of the District of Columbia

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

44 Canal Center Plaza
Alexandria, Virginia 22314-1562

BYLAWS

ARTICLE I

Organization of the Authority

Section 1. *Board of Directors.* As created on October 18, 1986, by Chapter 598 of the 1985 Virginia Acts of Assembly, as amended, and the Regional Airports Authority Act of 1985, D.C. Law 6-67, as amended, the Metropolitan Washington Airports Authority consists of eleven members. All powers, rights and duties of the Authority are thus conferred upon its members, who are collectively known as "the Board of Directors", hereinafter referred to as "the Board." Individual members of the Authority are known as "Directors."

a. There shall be eleven Directors: five appointed by the Governor of the Commonwealth of Virginia, three appointed by the Mayor of the District of Columbia, two appointed by the Governor of the State of Maryland, and one appointed by the President of the United States.

b. Directors shall (i) not hold elective or appointive public office, (ii) serve without compensation except that the Directors shall be entitled to reimbursement of their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties, and (iii) reside within the Washington Standard Metropolitan Statistical Area, except that the Director appointed by the President of the United States shall not be required to reside in that area.

c. Appointments to the Authority shall be for a period of six years. However, initial appointments shall be made as provided by law.

d. Each Director may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which he or she is appointed.

e. The Directors shall continue to serve until their successors shall be duly appointed and qualified. Any person appointed to fill a vacancy shall serve for the unexpired term. Any Director shall be eligible for re-appointment for one term.

Section 2. *Officers.* The Board shall annually elect from its membership a Chairman and Vice-Chairman and may elect from its membership, or appoint or employ from its staff, a Secretary and a Treasurer or a Secretary/Treasurer, and prescribe the powers and duties of each officer, and it may appoint from the staff an Assistant Secretary and an Assistant Treasurer, or an Assistant Secretary/Treasurer, who shall, in addition to other duties, discharge such functions of the Secretary and Treasurer, respectively, as may be directed by the Board. The Chairman and the Vice-Chairman may use any reasonable titles of their own choosing, such as Chair, Chairwoman, or Chairperson.

Section 3. *Term of Office.* All officers, as long as they continue to serve as a Director or staff, shall hold office until the next annual meeting of the Board, or until their successors are elected or appointed and qualified, whichever may be the later.

Section 4. *Standing Committees.* There shall be three standing Committees, on Finance, Operations and Planning.

ARTICLE II

Duties of the Board

The Board shall provide direction to the Authority in order to acquire, maintain, develop, promote and protect

Washington National and Washington Dulles International Airports. The Board shall promote good air transportation facilities with timely improvements at both Airports. The Board shall see that the laws pertaining to the purposes and functions of the Authority are faithfully observed and executed. The Board will employ staff and adopt appropriate procedures to carry out these duties.

ARTICLE III

Powers and Duties of the Officers of the Board

Section 1. *The Chairman.* The Chairman shall preside at all meetings of the Board; shall establish and appoint all Committees and the Chairmen thereof; shall determine the jurisdiction of all Committees; shall serve as an *ex officio* member of all Committees; shall execute documents on behalf of the Authority as prescribed by the Board; and shall perform such other duties as the Board may from time to time direct.

Section 2. *The Vice-Chairman.* The Vice-Chairman shall perform the duties and have the powers of the Chairman during the absence or incapacity of the Chairman from any cause. A certification by any six Directors as to such absence or incapacity from any regular or special meeting shall be conclusive evidence thereof.

Section 3. *The Secretary.* The Secretary shall be the custodian of all records and of the Seal of the Authority and shall keep accurate minutes of the meetings of the Board and its Committees. The Secretary shall have the authority to cause copies to be made of all minutes and other records and documents of the Authority and to certify under the official seal of the Authority that such copies are true copies. The Secretary shall affix the Seal of the Authority to legal instruments and documents as required. Secretary shall cause notice to be given to all meetings of the Authority as required by law or by these Bylaws and distribute the agenda and related materials

not less than 48 hours before the regular meetings of the Board. The Secretary, if a Director, shall become, *ex officio*, the Acting Chairman in the event the offices of the Chairman and Vice-Chairman are both vacant, or in the event that the Chairman and the Vice-Chairman are both unable to perform their duties by reason of absence or incapacity.

Section 4. *The Treasurer.* Except as may be required in any instrument under which any revenue or other bonds are issued by the Authority, the Treasurer shall have the care and custody of and shall be responsible for all monies of the Authority from whatever sources received. The Treasurer shall be responsible for the deposit of such monies in the name of the Authority in a bank or banks approved by the Board and shall be responsible for disbursements of such funds for purposes authorized or intended by the Board. The Treasurer, and any Assistant Treasurer, shall be bonded in an amount and with surety acceptable to the Board and shall make periodic accounting for all such funds as determined by the Board. The Treasurer's books shall be available for inspection by any Director of the Board during business hours.

Section 5. *Other Duties.* In addition to the duties and powers herein set forth, the Chairman, the Vice Chairman, the Secretary and the Treasurer shall each have the duties and powers as are commonly incident to their offices and such duties as may be imposed by law or as the Authority may from time to time by resolution specify.

ARTICLE IV

Board of Review

Section 1. *Establishment and composition.* There is hereby established a Board of Review of the Airports Authority to represent the interests of users of the Metropolitan Washington Airports. This Board has the re-

sponsibility of reviewing certain actions taken by the Board of Directors, as set forth below. The Board of Review shall be composed of nine Members, appointed by the Board of Directors as follows:

a. Four individuals from a list provided by the Speaker of the House of Representatives;

b. Four individuals from a list provided by the President *pro tempore* of the Senate; and

c. One individual chosen alternatively from a list provided by the Speaker of the House of Representatives and from a list provided by the President *pro tempore* of the Senate.

d. The Board of Directors may request additional recommendations from the Speaker and the President *pro tempore*.

Section 2. *Qualifications.* Members of the Board of Review shall be individuals who have experience in aviation matters and in addressing the needs of airport users, and who themselves are frequent users of either or both of the Metropolitan Washington Airports. A Member of the Board of Review shall be a registered voter of a jurisdiction other than Maryland, Virginia, or the District of Columbia.

Section 3. *Terms.* Members of the Board of Review shall be appointed for six years. Members of the Board of Review appointed under paragraph c. of section 1 shall be appointed for terms of two years. The Board of Directors shall fill a vacancy on the Board of Review in the same manner in which the original appointment was made. Any Member appointed to fill a vacancy before the expiration of the term for which the Member's predecessor was appointed shall be appointed only for the remainder of such term.

Section 4. *Removal.* Members of the Board of Review are subject to removal only for cause by a two-thirds vote of the Board of Directors.

Section 5. *Effect of more than four vacancies.* At any time that the Board of Review has more than four vacancies and lists have been provided for appointments to fill such vacancies, the Authority will not take any of the actions required under section 7 below to be submitted to the Board of Review.

Section 6. *Procedures.* The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings, for voting by proxy, and for the selection of a Chairman. Proxies may be given only to other Members of the Board of Review. The Board of Review shall meet at least once each year and shall meet at the call of its Chairman or three of its Members. With at least one week's notice, the Board of Directors may also call meetings of the Board of Review. Any recommendation of the Board of Review under section 7 and any request under section 11 shall be by a vote of five members.

Section 7. *Review procedure.* The Board of Directors shall submit the following actions to the Board of Review at least thirty days (or at least sixty days in the case of the annual budget) before they are to become effective:

a. the adoption of an annual budget, and any amendments thereto;

b. the authorization for the issuance of bonds and an annual plan for the issuance of bonds and any amendments to such plan;

c. the adoption, amendment, or repeal of a regulation;

d. the adoption or revision of a master plan;

e. the appointment of the chief executive officer;

f. the award of a contract (other than a contract in connection with the issuance or sale of bonds which

is executed within thirty days of the date of issuance of the bonds) which has been approved by the Board of Directors;

g. any action of the Board of Directors approving a terminal design or airport layout or modification of such design or layout; and

h. the authorization for the acquisition or disposal of land and the grant of a long-term easement.

The Board of Review may make recommendations to the Board of Directors regarding an action (1) within thirty calendar days of its submission or (2) ten calendar days (excluding Saturdays, and holidays, and any day on which neither House of Congress is in session because of an adjournment *sine die,* a recess of more than three days, or an adjournment of more than three days) of its submission, whichever period is longer. Such recommendations may include a recommendation that the action not take effect. If the Board of Review does not make a recommendation in the applicable review period under this section, or if at any time in such review period the Board of Review decides that it will not make a recommendation on an action, the action may take effect.

Section 8. *Effect of recommendation.* An action with respect to which the Board of Review has made a recommendation in accordance with section 7 may only take effect if the Board of Directors adopts such recommendation or if the Board of Directors has evaluated and responded, in writing, to the Board of Review with respect to such recommendation and transmits such action, evaluation, and response to the Congress in accordance with section 9 and the sixty-calendar-day period prescribed in section 9 expires.

Section 9. *Nonadoption of recommendation.* If the Board of Directors does not adopt a recommendation of the Board of Review regarding an action, the Board of Directors shall transmit to the Speaker of the House of

Representatives and the President of the Senate a detailed description of the action, the recommendation of the Board of Review regarding the action, and the evaluation and response of the Board of Directors to such recommendation, and the action may not take effect until the expiration of sixty calendar days (excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment *sine die*, a recess of more than three days, or an adjournment of more than three days) beginning on the day on which the Board of Directors makes such transmission to the Speaker of the House of Representatives and the President of the Senate.

Section 10. *Limitation on expenditures.* Unless an annual budget for a fiscal year has taken effect in accordance with either section 7 or 9, the Authority shall not obligate or expend any money in such fiscal year, except for (1) debt service on previously authorized obligations, and (2) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

Section 11. *Request for consideration of other matters.* The Board of Review may request the Board of Directors to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request, the Board of Directors will consider and vote, or report, on the matter as promptly as feasible.

Section 12. *Participation in meetings of the Board of Directors.* Members of the Board of Review may participate as nonvoting members in meetings of the Board of Directors.

Section 13. *Staff.* The Board of Review may hire two staff persons to be paid by the Authority. The Authority shall provide such clerical and support staff as the Board of Review may require. The staff shall be employees of the Authority.

Section 14. *Limitation on Board actions.* If the Board of Review is unable to function as described in this

Article by reason of a judicial order, the Board of Directors thereafter may not take any actions that must be submitted to the Board of Review under section 7, but may continue to take all actions other than those that must be submitted.

ARTICLE V

Chief Executive Officer, and Other Employees

Section 1. *Chief Executive Officer.* The Board shall appoint a Chief Executive Officer who shall be the Chief Executive Officer of the Authority. He or she shall, except as otherwise provided by the Board, be in charge of management and all operations of the Airports and any other activities of the Authority as prescribed by the Board. The Chief Executive Officer shall sign documents on behalf of the Authority as prescribed by the Board. The Chief Executive Officer shall discharge his or her duties as directed by the Board.

Section 2. *Employees.* The Chief Executive Officer shall present the Board with a plan for staffing the Authority. All selections for positions reporting directly to the Chief Executive Officer shall be subject to approval by the Board.

ARTICLE VI

Offices, Books and Records

Section 1. *Offices.* The Board shall establish the principal office of the Authority at or near either Washington National Airport or Washington Dulles International Airport.

Section 2. *Books and Records.* Except as may be otherwise required or permitted by resolution of the Board, or as the business of the Authority may from time to time require, all of the books and records of the Authority shall be kept at its principal office. Such books and records shall be available during ordinary business hours for inspection by any member of the public.

Section 3. *Minutes.* All approved minutes of Board or Committee meetings other than those of an executive session shall be open to public inspection during ordinary business hours.

ARTICLE VII

Meetings of the Board

Section 1. *Meetings Open to the Public.* All meetings of the Board and its Committees shall be open to the public, except during executive sessions.

Section 2. *Regular Meetings.* A regular meeting of the Board shall be held without call or formal notice at the principal office of the Authority on the first Wednesday of every month at 9 a.m., except that in any case in which such day shall be a legal holiday, or for any other reason inappropriate as a meeting day, the regular meeting shall be held on such other day as may be determined by at least six Directors after consultation with all of the Directors and upon the provision of seventy-two hours notice to the Secretary. The Secretary shall notify all of the Directors upon receipt of such notice.

Section 3. *Annual Meeting.* The regular meeting held in the month of September in each year shall be the annual meeting for the election of a Chairman, Vice-Chairman, Secretary and a Treasurer. If the annual meeting is omitted, a special meeting shall be held in lieu thereof as soon as practicable, and all elections held and action taken thereat shall have the same effect as if held or taken at the annual meeting.

Section 4. *Special Meeting.* Special meetings may be called at any time by the Chairman. Upon receipt of a written request for a special meeting from any six Directors, the Chairman must call a meeting. Written notice of each special meeting, specifying the time and place of the meeting, and the purpose or purposes of the meeting, shall be given to the Directors by the Secretary. Notice shall be deemed sufficient if sent by mail at least seventy-

two hours in advance of the date and time of the meeting or by telegram or otherwise in writing within twenty-four hours before the time of the meeting, if given to the Directors in person. Formal notice to any person shall not be required provided all Directors are present or those not present shall have waived notice in writing, filed with the records of the meeting, either before or after the meeting.

Section 5. *Information.* Information as to the time and place of each meeting shall be furnished to any person who requests such information. Requests to be notified on a continuing basis shall be made at least once a year in writing.

ARTICLE VIII

Quorum

Section 1. *Quorum.* Six Directors shall constitute a quorum for the transaction of all business at a regular or special meeting. A majority of the members of a Committee, not including the *ex officio* member, shall constitute a quorum for the transaction of all Committee business.

Section 2. *Majority Voting.* Action by the Board shall be by a simple majority vote of the Directors present and voting except where otherwise provided by the Bylaws. Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

ARTICLE IX

Trasaction of Business

Section 1. *Regular, Special and Committee Meetings.* Any business of the Agency may be considered at any regular meeting of the Board. Only items of business identified in the agenda distributed by the Secretary forty-eight hours in advance of the meeting may be acted upon at a regular meeting. Other matters may be acted upon

if a majority of the Board of Directors votes to waive this notice provision. When notice of a special meeting is sent, only matters specified or described in the notice may be considered at the special meeting, except that with the unanimous consent of the Directors present any other matter be considered. Business within the jurisdiction of a Committee may be considered at any meeting of the Committee. Only items of business identified in the agenda distributed by the Secretary forty-eight hours in advance of the meeting may be acted upon at a Committee meeting. Other matters may be acted upon if a majority of the Members of the Committee vote to waive this notice provision.

Section 2. *Order of Business.* Unless waived by a vote of six or more Directors, the order of business at a regular meeting of the Board shall be:

a. Approval of the minutes of the previous meeting.

b. Committee Reports

c. Report of Chief Executive Officer and staff.

d. Unfinished business.

e. New business.

f. Other business and adjournment.

Section 3. *Executive Session.* All regular, special and committee meetings of the Board shall be open to the public, except that at any time a majority of the Directors present may affirmatively vote to consider a matter or matters in the categories described below in executive session which will be closed to the public. Any motion to meet in executive session must identify in general terms the subject or subjects to be considered and identify the subsection below under which the executive session is authorized. The following items or matters may be considered and acted upon by the Board, and appropriate officers and staff, in the executive session:

a. Personnel matters such as the discussion or consideration of: employment, appointment, assignment, promotion, demotion, performance appraisal, discipline, resignation, salaries and benefits, and interviews of Directors, officers, and employees of the Authority, and applicants for the same.

b. Personal matters not directly related to the Authority's business in order to protect the privacy of individuals.

c. Existing or prospective contracts, business or legal relationships to protect proprietary or confidential information of the Authority, any person or company; the financial interest of the Authority; or the negotiating position of the Authority.

d. Financial matters, including the indebtedness of the Authority and the investment of Authority funds, particularly where competition or negotiation is involved.

e. Consultation with legal counsel and briefings by staff, consultants and/or attorneys, pertaining to actual or potential litigation, pending or proposed legislation, compliance with a specific constitutional, statutory or judicially imposed requirement, or other legal matters, and discussions of such matters by the Board without the presence of counsel, staff, consultants, or attorneys.

f. Discussion of security plans and other law enforcement measures for the protection of the public from terrorism and aircraft hijacking.

g. Audit matters.

Section 4. *Actions in Executive Session.* No resolution, contract, or motion, adopted, passed or agreed to in an executive session, other than a request to the staff for information, shall become effective unless the Board or Committee, at an appropriate time following such session, reconvenes in public or open session and takes a vote of the Directors on such resolution, contract, or motion and the subject of the resolution, contract, or motion shall be

reasonably identified in the open session. This shall not be construed to require the Board or Committee to divulge information that is proprietary or actions which are not final.

Section 5. *Other Business.* After completion of the agenda, the Chairman, Directors, or the Chief Executive Officer may, for information purposes, place any matter or matters on the agenda or other business which they deem to require the attention of the Board.

Section 6. *Procedure.* Roberts Rules of Order, as amended, shall be the authority for all matters of procedure not otherwise covered by these Bylaws. A point of order as to procedure raised by any Director in the course of a regular, special or committee meeting shall be resolved by a ruling of the Chairman. The vote of a majority of the Directors present shall be required to overrule the Chairman.

ARTICLE X

Directives and Regulations

Section 1. *General.* The Board will adopt, amend and repeal as necessary: 1) internal directives and procedures for operating the Airports, including delegations of authority, and 2) regulations which may have the force and effect of law, pertaining to the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

Section 2. *Regulatory procedure.* Unless the Board determines that an emergency exists by unanimous vote of all Directors present, the Board shall, prior to the adoption of any regulation or alteration, amendment, or modification thereof:

a. Make such regulation or amendment thereof in convenient form available for public inspection in the office of the Authority for at least ten days.

b. Publish a notice in a newspaper or newspapers of general circulation in the District of Columbia, Montgomery County and Prince George's County, Maryland, and in the local political subdivisions of the Commonwealth of Virginia where the Authority facilities are located declaring the Authority's intention to consider adopting such regulation or amendment thereof and informing the public that the Authority will hold a public hearing at which any person may appear and be heard for or against the adoption of such regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the day of the publication thereof; and

c. Hold the public hearing, or appoint a hearing officer to hold a public hearing, on the day and at a time specified in such notice or any adjournment thereof, and hear persons appearing for or against such regulation or amendment thereof.

d. In accordance with the Metropolitan Washington Airports Act of 1986, adoption by the Board of the regulations of the Federal Aviation Administration which govern the Airports at the time the Airports are transferred to the Authority shall not be subject to this procedure.

Section 3. *Inspection of regulations.* The Authority's regulations shall be available for public inspection in the Authority's principal office.

Section 4. *Force and Effect of Law.* The Authority's regulations relating to:

a. Air operations and motor vehicle traffic, including, but not limited to, motor vehicle speed limits and the location of and payment for public parking;

b. Access to and use of Authority Facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

c. Aircraft operation and maintenance;

shall have the force and effect of law, as shall any other regulation of the Authority which shall contain a determination by the Board that it is necessary to accord the same force and effect of law in the public interest; provided, however, that with respect to motor vehicle traffic rules and regulations, the Board will obtain the approval of the traffic engineer or comparable official of the local political subdivision in which such rules or regulations are to be enforced.

Section 5. *Effective Dates.* The Board shall establish the effective date of its regulatory actions consistent with Article IV of these Bylaws.

ARTICLE XI

Miscellaneous

Section 1. *Code of Ethics.* The Board shall adopt a code of ethics and financial disclosure to assure the integrity of all decisions by the Board, its Board of Review, and employees of the Authority. The code shall provide that each Director and his/her immediate families may not hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airports services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions may be made if the financial interest is fully interest is fully disclosed to the Board and the Director does not participate in Board decisions that directly affect such interest.

Section 2. *Indemnity.* The Authority shall indemnify each Director and Officer against all costs and expenses (including counsel fees) the Director actually incurs in connection with or resulting from any action, suit or proceeding, of whatever nature, to which the Director is or shall be made a party by reason of his being or having

been a Director or Officer of the Authority, provided (1) that the Director or Officer conducted him- or herself in good faith and (2) reasonably believed that his or her conduct was in the best interest of the Authority. This indemnity shall not apply in actions when the Director or Officer is adjudged liable to the Authority.

Section 3. *Minority participation.* The Board shall develop and adopt a policy for providing minority participation in the contracts of the Authority.

ARTICLE XII

Amendments

These Bylaws may be amended or repealed in whole or in part by resolution of the Board adopted by at least seven Directors at any regular meeting or special meeting, provided that notice of intention to present such resolution shall be given to all Directors at least two days in advance of the meeting at which the motion to adopt such resolution is to be made. Such notice shall be given by any Director, or by the Secretary at the request of any Directors, and shall specify the subject matter of the proposed amendment or repeal. The notice of intention to amend or repeal these Bylaws shall include a specific reference to the Article subject to the proposed amendment or repeal, together with the suggested change.

Adopted March 4, 1987

Amended January 8, 1992 and April 1, 1992

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92-556-JHG

JOHN W. HECHINGER, SR., *et al.*,
Plaintiffs,

v.

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY, *et al.*,
Defendants.

PLAINTIFFS' STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 108(h), plaintiffs submit the following statement of material facts as to which there is no genuine issue.

1. On February 5, 1992, after receiving a list of five nominees from the Speaker of the House, which consisted entirely of Members of the House of Representatives, four of whom serve on the House Committees with oversight responsibility over transportation matters, the Board of Directors appointed those five Members to the Board of Review. Answer ¶ 24; Board of Directors Meeting, Minutes of Feb. 5, 1992, at 8 (Pl. Ex. B). The Board of Directors did not request the submission of any additional names from the House. All five of the House nominees were members of the old Board of Review at the time of the Supreme Court decision. *Compare* Pl. Ex. B *with* 1991 Hearing at 6.

2. In February, 1992, the Board of Directors received a list of three nominees from the President *pro tempore* of the Senate, which consisted of three Senators who serve on the Senate Committees with oversight responsi-

bility over transportation matters, and who had been members of the Board of Review in June 1991, and a letter submitting the name of one individual who is not a Member of Congress. Letters to Hon. Linwood Holton from President *pro tempore* Robert Byrd (Feb. 5, 1992 & Feb. 20, 1992) (Pl. Exs. C & D); *cf.* 1991 Hearing at 6. The Board of Directors did not request the submission of any additional names from the Senate. On February 27, 1992, the Board of Directors appointed these four individuals to the Board of Review. Answer ¶ 25; Board of Directors Special Meeting, Minutes of Feb. 27, 1992, at 1 (Pl. Ex. E).

3. The 60-day review period set forth in the Metropolitan Washington Airports Authority Amendments, § 6007(f)(4)(D), will span at least three months, and might span more than six months in some circumstances. Affidavit of Pamela Gilbert ¶¶ 3-4 (May 28, 1992).

Respectfully submitted,

/s/ Patti A. Goldman
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Attorneys for Plaintiffs

May 29, 1992

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92-556-JHG

JOHN W. HECHINGER, SR., *et al.*,
Plaintiffs,

v.

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY, *et al.*,
Defendants.

AFFIDAVIT OF PAMELA GILBERT

I, Pamela Gilbert, hereby declare as follows:

1. I am the legislative director of Public Citizen's Congress Watch, a position that I have held since the end of 1989. In that capacity, I supervise a staff of four attorneys who regularly lobby Congress on a wide range of issues, as well as handling my own lobbying duties. From 1984 until I came to Public Citizen, I was the consumer program director of the U.S. Public Interest Research Group, the national lobbying office for a network of state consumer advocacy organizations. In that capacity, I engaged in extensive lobbying of the U.S. Congress. Based on my lobbying experience, I am familiar with congressional practices, including the patterns of congressional recesses and adjournments.

2. I understand that, in the Metropolitan Washington Airports Act Amendments of 1991, Congress established a 60-day period for Congress to review certain actions of the Metropolitan Washington Airports Authority ("MWAA"), and that the review period consists of calendar days excluding Saturdays, Sundays, holidays,

and any day on which neither House of Congress is in session because of an adjournment *sine die*, a recess of more than three days, or an adjournment of more than three days.

3. Since this period excludes weekends and holidays, it consists of at least three months. However, based on my experience, Congress typically recesses or adjourns for more than three days at least once during any three month period, and such recesses or adjournments can occur much more often than that. Therefore, on average, the review period will span more than three months.

4. However, it is also possible for the review period to cover more than six months, particularly in an election year when Congress generally recesses for two long breaks in the summer for party conventions, and then adjourns *sine die* in early October. Thus, if the MWAA Board of Directors submitted an action to Congress in late June of this year, there would be only approximately 15 to 20 legislative days in July, less than 10 legislative days in August, and 15 to 20 legislative days in September before Congress adjourns *sine die*. The new Congress would not begin until the third week in January, 1993. Therefore, it is possible for the 60 day review period to span more than six months.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28 day of May, 1992.

/s/ Pamela Gilbert
PAMELA GILBERT